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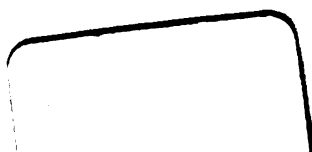
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REVISED LAWS OF NEVADA

CONTAINING

THE STATUTES OF A GENERAL NATURE FROM 1913 TO 1919
WITH ANNOTATIONS FROM VOLUMES 31 TO 42, NEVADA
REPORTS, AND FROM FEDERAL AND STATE DECISIONS; ALSO
A DIGEST OF VOLUMES 31 TO 42, NEVADA REPORTS, AND OF
FEDERAL CASES ORIGINATING IN NEVADA DURING THE SAME
PERIOD; ALSO A TABLE OF CITATIONS OF NEVADA CASES

Prepared under legislative enactment, by

GEO. B. THATCHER

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VOLUME III



CARSON CITY, NEVADA

JOE FARNSWORTH, Superintendent of State Printing

1920



VIA AIR MAIL

PREFACE

The purpose of issuing this work as a supplementary volume was to preserve the value of Volumes 1 and 2, Revised Laws of Nevada, and Nevada Digest Annotated, both of which works were published in 1912, and are owned by nearly every lawyer of this State.

It would have been an easier task to prepare a new compilation and digest separately, but this would have involved the expenditure of, in the aggregate, a large sum of money by the legal fraternity in purchasing such new works.

More than a year of patient work has been devoted to the preparation of the material herein contained, and the compilers hope that their efforts will be appreciated.

The work contains all of the laws of a general nature contained in the Statutes of Nevada for 1913, 1915, 1917, and 1919, arranged alphabetically under the topics to which they properly belong.

The exact text of every section contained in Volumes 1 and 2, Revised Laws of Nevada, which has been amended is set forth under the old section-number in this volume.

Every section and act of said Volumes 1 and 2 which have been expressly repealed are shown by reference to the book and page repealing the same. For convenience in use, all references to reported cases have been translated into Reporter paging.

The Digest covers the volumes shown on the title-page thereof, and to make them more accessible the digest of Federal Cases originating in Nevada is included therein.

The Citations of Nevada Cases cover the same period of time.

No attempt has been made to segregate these Citations of Nevada Cases, for the reason that they are few in number for each particular case, and it is believed that each attorney using them would prefer to form his own judgment as to the value of each citation.

The work, being arranged alphabetically, with the exception of Civil Practice, Crimes and Punishments, Criminal Practice, Courts and Court Officers, and State Prison and Jails, is really an index in itself, but in the index a short title of each new Act is set forth under its proper heading and thereunder the subheads of each such new Act are alphabetically arranged.

The thanks of the compilers are due for many valuable suggestions and assistance in the preparation of this work to Joe Farnsworth, State Printer, Will U. Mackey, Foreman, of the State Printing Office, Mrs. Marion G. Bowen, and many lawyers of the State.

Hoping that their efforts will be appreciated by the members of the legal fraternity, this work is respectfully submitted to them for their use.

RULES
OF THE
SUPREME COURT OF THE STATE OF NEVADA

Adopted March 15, 1920. Effective July 1, 1920

RULE I

1. **Attorneys and Counselors**—Applicants for license to practice as attorneys and counselors will be examined in open court on the first day of each term, or by a committee as hereinafter provided.

2. **Affidavit of Applicants**—Applicants must, at least forty-five days before the date of examination, file with the clerk of the court an affidavit in duplicate, one copy to remain on file and the other to be transmitted to the secretary of the State Bar Association, stating:

- (a) When and where the applicant was born, the various places of his residence, and giving at least two references in each place in which he has resided since attaining the age of 21 years.
- (b) Whether or not he has been engaged in business at any time; and, if so, when, where, and the kind of business.
- (c) The names and postoffice address of all persons by whom the applicant has been employed, for a period of five years immediately preceding the making of his application.
- (d) The applicant's general and legal education, what schools he has attended, the length of time in attendance at each, and whether or not he is a graduate of any school or schools.
- (e) Whether or not applicant has ever applied to any court for admission. If so, when and where and the result thereof.
- (f) If applicant has been licensed to practice law, whether any disbarment or other proceedings of a like nature have ever been instituted against him. If so, when and where such proceedings were instituted, and the particulars.
- (g) If a naturalized citizen, when and where naturalized.
- (h) How long applicant has resided in the State of Nevada; whether he is a bona-fide resident, or whether he came into the state for the sole purpose of being admitted to practice law.

3. **Examination to Embrace**—The examination shall embrace the following subjects:

1. Course and duration of the applicant's studies.
2. The history of this state and of the United States.
3. The constitutional relations of the state and federal governments.
4. The jurisdiction of the various courts of this state and of the United States.
5. The various sources of our municipal law.
6. The general principles of the common law relating to property and personal rights and obligations.
7. The general grounds of equity jurisdiction and principles of equity jurisprudence.
8. Rules and principles of pleadings and evidence.
9. Practice under the civil and criminal codes of Nevada.
10. Remedies in hypothetical cases.
11. Legal ethics.

4. **Examination by Committee**—Upon the recommendation of the district judge of any judicial district, the supreme court may appoint a committee to examine persons applying for admission to practice as attorneys and counselors at law. Such committee shall consist of the district judge and at least two attorneys, residents of the district.

RULES OF THE SUPREME COURT

The committee so appointed shall conduct a written examination of the applicants, the questions and answers to be reduced to writing.

No intimation of the questions to be asked shall be given any applicant.

5. Report of Committee—When the examination has been completed and reduced to writing, the examiners will return it to this court, accompanied by their certificate showing whether or not the applicant is of good moral character and has attained his majority, and is a bona-fide resident of this state. Such certificate shall also contain the facts that the applicant was examined in the presence of the committee; that he had no knowledge or intimation of the nature of any of the questions to be propounded to him before the same were asked by the committee, and that the answers to each and all of the questions were taken down as given by the applicant without reference to any books or other outside aid.

6. Admission of Attorneys from Other Jurisdictions—~~No member of the bar of a sister state or foreign country shall be licensed to practice law in this state, except upon presentation of a certificate of the clerk of the court in the state or foreign country in which the applicant last practiced, certifying that the applicant is a member in good standing of the bar of that state or foreign country, and that no disbarment or other proceedings affecting his standing as an attorney are pending and undisposed of before the court; which certificate shall be supplemented by a letter from the secretary of the local bar association of the city or county in which such applicant last resided (or in case there be no local bar association, from the secretary of the state bar association), certifying to his good moral character, and by a letter of recommendation from the judge of the court of record before which he last practiced, together with such other evidence of good moral character and fitness as may be required by the court; provided, that no practitioner shall be licensed to practice in this state without examination, unless attorneys who have been licensed to practice in this state are licensed to practice without examination in the state from which the applicant holds his license; and provided, further, that in no event shall members of the bar of a sister state or foreign country which does not require an examination as to legal qualifications of an applicant as a prerequisite for admission to the bar receive a license to practice law in this state, except upon taking the regular examination as to his qualifications; and provided, further, that in no event shall a member of the bar of a sister state or foreign country where the common law of England is not the basis of its jurisprudence be licensed to practice law in this state without taking an examination as to his qualifications; and provided, further, that no member of the bar of a sister state or foreign country shall be licensed to practice law in this state, except upon taking the regular examination as to his qualifications, unless at the time of his application for license he shall be an actual, bona-fide resident of this state. This proviso, however, is not intended to prevent any court of this state from permitting a member of the bar of a sister state or foreign country to appear and act as counsel in a particular case or matter before such court.~~

~~The requirements as to credentials may be waived by the court in the case of an applicant whose worth and fitness are well known to the justices of the court.~~

7. Fee To Be Deposited Before Examination—The fee of thirty-five dollars for license must in all cases be deposited with the clerk of the court before the examination, to be returned to the applicant in case of rejection.

8. Oath—In addition to the constitutional oath or affirmation, an attorney, before being admitted to practice, shall subscribe to the following:

That he will maintain the respect due to courts of justice and judicial officers; that he will counsel and maintain only such actions, proceedings, and defenses as appear to him legal and just, except the defense of a person charged with a public offense; that he will employ for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and will never seek to mislead the judge by any artifice or false statement of facts or law; that he will maintain inviolate, and at every peril to himself preserve, the secrets of his client; that he will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged; and that he will never reject, from any consideration personal to himself, the cause of the defenseless or oppressed.

RULE II

Filing Transcript—The transcript of the record on appeal shall be filed within thirty days after the appeal has been perfected, and the bill of exceptions, if there be one, has been settled. [Old Rule II as changed.]

Skaggs v. Bridgman, 39 Nev. 310; Miller v. Walser, 42 Nev. 497.

RULE III

1. **Appeal May Be Dismissed**—If the transcript of the record be not filed within the time prescribed by Rule II, the appeal may be dismissed on motion without notice. On such motion there shall be presented the certificate of the clerk below, under the seal of the court, certifying the amount or character of the judgment; the date of its rendition; the fact and date of the filing of the notice of appeal, together with the fact and date of service thereof on the adverse party, and the character of the evidence by which said service appears; the fact and date of the filing of the undertaking on appeal, and that the same is in due form; the fact and time of the settlement of the bill of exceptions, if there be one; and also that the appellant has received a duly certified transcript, or that he has not requested the clerk to certify to a correct transcript of the record; or, if he has made such request, that he has not paid the fees therefor, if the same have been demanded. The appeal may also be dismissed, upon good cause shown, on notice to the opposite party.

Skaggs v. Bridgman, 39 Nev. 310; Adams v. Rogers, 31 Nev. 150; Young v. Updike, 29 Nev. 303; Robinson v. Kind, 25 Nev. 261; Collins v. Goodwin, 32 Nev. 342; Bliss v. Grayson, 24 Nev. 422.

2. **May Be Restored**—A cause dismissed without notice may be restored during the same term, upon good cause shown, on notice to the opposite party.

Hayes v. Davis, 23 Nev. 233; Lightle v. Ivancovich, 10 Nev. 41; Western Engineering Co. v. Nevada Amusement Co., 31 Nev. 237.

3. **Unless Restored, Dismissal a Bar**—Unless restored, the dismissal shall be final and a bar to any other appeal from the same order or judgment.

RULE IV

1. **Printed Transcripts**—All transcripts of record in civil cases, when printed, shall be printed on unruled white paper, ten inches long by seven inches wide, with a margin on the outer edge of not less than one inch. The printed page shall not be less than seven inches long and three and one-half inches wide. The folios, embracing ten lines each, shall be numbered from the commencement to the end, and the numbering of the folios shall be printed between lines or on the margin. Nothing smaller than minion (7-point) type leaded shall be used in printing.

2. **Transcripts in Criminal Cases**—Transcripts in criminal cases may be printed in like manner as prescribed for civil cases.

3. **Transcripts May Be Typewritten—To Be Bound in Boards, with Flexible Backs**—All transcripts of the record in any action or proceeding may be typewritten. The typewriting shall be the first impression, clearly and legibly done, with best quality of black ink, in type not smaller than small pica, upon a good quality of typewriting paper, thirteen inches long by eight inches wide, bound in boards with flexible backs, in volumes of a size suitable for convenient handling and ready reference, and arranged and indexed as required by the rules of this court. When so typewritten, such transcript, in the discretion of the party appealing, need not be printed, but, if printed, all the rules concerning the same shall still apply thereto. [This was subdivision 1 of old Rule XXV.]

4. **To Be Indexed**—The pleadings, proceedings, and bill of exceptions shall be chronologically arranged in the transcript, and each transcript shall be prefaced with an alphabetical index, specifying the folio of each separate paper, order, or proceeding, and of the testimony of each witness; and the transcript shall have at least one blank fly-sheet cover. [This was subdivision 3 of former Rule IV.]

RULES OF THE SUPREME COURT

5. Record Not Conforming to Rules May Be Struck Out on Motion—Any record which fails to conform to these rules may, upon motion and good cause shown, be ordered to be struck from the files.

Robinson v. Kind, 25 Nev. 274.

RULE V

Printing Transcripts—The written transcript in civil causes, together with sufficient funds to pay for the printing of the same, may be transmitted to the clerk of this court. The clerk, upon the receipt thereof shall file the same and cause the transcript to be printed, and to a printed copy shall annex his certificate that the said printed transcript is a full and correct copy of the transcript furnished to him by the party; and said certificate shall be prima facie evidence that the same is correct. The said printed copy so certified shall also be filed, and constitute the record of the cause in this court, subject to be corrected by reference to the written transcript on file.

RULE VI

1. Cost of Typewriting or Printing Transcripts—The expense of printing or typewriting transcripts, affidavits, briefs, or other papers on appeal in civil causes, and pleadings, affidavits, briefs, or other papers constituting the record in original proceedings upon which the case is heard in this court, required by these rules to be printed or typewritten, shall be allowed as costs, and taxed in bills of costs in the usual mode; *provided*, that no greater amount than fifteen cents per folio of one hundred words, and for one copy only, shall be taxed as costs for either printing or typewriting; all other costs to be taxed by the clerk in accordance with the fee bill.

Brandon v. West, 28 Nev. 500; Richards v. Vermilyea, 42 Nev. 294; State v. Sadler, 25 Nev. 134.

2. To Serve Cost Bill, When—Either party desiring to recover as costs his expenses for printing or typewriting in any cause in this court shall, within five days after the publication or notice of the decision of the cause, file with the clerk and serve upon the opposite party a verified cost bill, setting forth or stating the actual cost of such printing or typewriting, and no greater amount than such actual cost shall be taxed as costs.

Candler v. Ditch Co., 28 Nev. 422; Zelavin v. Mining Co., 41 Nev. 1.

3. Mode of Objecting to Costs—If either party desires to object to the costs claimed by the opposite party, he shall, within ten days after the service upon him of a copy of the cost bill, file with the clerk and serve his objections. Said objections shall be heard and settled and the costs taxed by the clerk. An appeal may be taken from the decision of the clerk, either by written notice of five days, or orally and instant, to the justices of this court, and the decision of such justices shall be final. If there be no objections to the costs claimed by the party entitled thereto, they shall be taxed as claimed in his cost bill.

In Re Hartung's Estate, 39 Nev. 219; State v. Sadler, 25 Nev. 134.

Query: Can cost bill be amended? State v. District Court, 26 Nev. 253.

4. Indorsed Upon Remittitur—In all cases where a remittitur or other final order is sent to a district court or other inferior tribunal, the costs of the party entitled thereto as taxed by the clerk shall be indorsed upon such remittitur or order, and shall be collected as other costs in such district court, or other inferior court or tribunal, and shall not be subject to retaxation in such district court or other tribunal.

RULE VII

To Correct Error in Transcript—For the purpose of correcting any error or defect in the transcript from the court below, either party may suggest the same, in writing, to this court, and, upon good cause shown, obtain an order that the proper clerk certify to the whole or part of the record as may be required, or may produce the same, duly certified, without such order. If the attorney of the adverse party be absent, or the fact of the alleged error or defect be disputed, the suggestion, except when a certified copy is produced at the time, must be accompanied by an affidavit showing the existence of the error or defect alleged.

State v. Bouton, 26 Nev. 34, 39; Christensen v. Floriston P. Co., 29 Nev. 552; Kirman v. Johnson, 30 Nev. 150; State v. Hill, 32 Nev. 187; Botsford v. Van Riper, 32 Nev. 214.

RULE VIII

Exceptions—Diminution of Record—Exceptions or objections to the transcript, bill of exceptions, the undertaking on appeal, notice of appeal or to its service or proof of service, or any technical exception or objection to the record affecting the right of appellant to be heard on the points of error assigned, which might be cured on suggestion of diminution of the record, must be taken at the first term after the transcript is filed, and must be noted in the written or the printed points of the respondent, and filed at least one day before the argument, or they will not be regarded.

Alderson v. Gilmore, 13 Nev. 85; State v. Cal. M. Co., 13 Nev. 203, 209, 210; Truckee Lodge v. Wood, 14 Nev. 310; Brooks v. Nevada Nickel Syndicate, 24 Nev. 264, 271; State ex rel. Launiza v. Justice Court, 29 Nev. 192, 200; Smith v. Wells Estate Co., 29 Nev. 411, 416; Kirman v. Johnson, 30 Nev. 146, 150; State v. Hill, 32 Nev. 185, 187; Botsford v. Van Riper, 32 Nev. 214, 225; Skaggs v. Bridgman, 39 Nev. 310; Zelavin v. Tonopah Development Co., 41 Nev. 1. See Section 5358, Rev. Laws 1912.

RULE IX

Substitution in Case of Death—Upon the death or other disability of a party pending an appeal, his representative shall be substituted in the suit by suggestion in writing to the court on the part of such representative, or any party on the record. Upon the entry of such suggestion, an order of substitution shall be made and the cause shall proceed as in other cases.

Robinson v. Kind, 25 Nev. 278; Twaddle v. Winters, 29 Nev. 89.

RULE X

1. **Calendar**—The calendar of each term shall consist only of those cases in which the transcript shall have been filed on or before the first day of the term, unless by written consent of the parties; *provided*, that all cases, both civil and criminal, in which the appeal has been perfected and the bill of exceptions settled, as provided in Rule II, and the transcript has not been filed before the first day of the term, may be placed on the calendar, on motion of either party, after ten days' written notice of such motion, and upon filing the transcript.

2. Causes shall be placed on the calendar in the order in which the transcripts are filed by the clerk.

3. The calendar shall be called on the first day of each term and cases set for oral argument upon a day certain, upon request of counsel upon either side of the case, or upon stipulation, subject to the approval of the court. Requests for settings may be made by counsel in open court or by written communication addressed to the clerk. Upon stipulation of counsel, subject to the approval of the court, cases may be submitted on briefs filed without oral argument. Where no request is made by stipulation or otherwise for the setting of a case, the same may be passed or be set by the court of its own motion.

RULE XI

1. **Time for Appellant to Serve Brief—Respondent**—Within fifteen days after the filing of the transcript on appeal in any case, the appellant shall file and serve his points and authorities or brief; and within fifteen days after the service of appellant's points and authorities or brief, respondent shall file and serve his points and authorities or brief; and within fifteen days thereafter, appellant shall file and serve his points and authorities or brief in reply, after which the case may be argued orally.

For failure to comply with the above rule, judgment may be affirmed: Goodhue v. Shedd, 17 Nev. 140; Gardner v. Pacific Power Co., 40 Nev. 343.

But see: Smith v. Wells, 29 Nev. 415; Adams v. Rogers, 31 Nev. 161.

Errors assigned, but not briefed or orally argued, waived: Candler v. Ditch Co., 28 Nev. 164. See, also, 94 Atl. Rep. 501; 109 N. E. 365; 92 Pac. 401; 72 Pac. 607; 94 Pac. 452.

Failure of respondent to file brief, see: Durant Nat. Bank v. Cummins, 148 Pac. 1022.

2. The points and authorities shall contain such brief statement of the facts as may be necessary to explain the points made.

3. **Oral Argument**—The oral argument may, in the discretion of the court, be limited to the printed or typewritten points and authorities or briefs filed, and a failure by either party to file points and authorities or briefs under the provisions of this rule and within the time herein provided, shall be deemed a waiver by such party of the right to orally argue the case, and such party shall not recover cost for printing or typewriting any brief or points and authorities in the case. Counsel shall not read from decisions nor argue more than one hour on each side without permission of the court.

4. No more than two counsel on a side will be heard upon the oral argument, except by special permission of the court, but each defendant who has appeared separately in the court below may be heard through his own counsel.

5. **Optional in Criminal Cases**—In criminal cases it is left optional with counsel either to file written, printed, or typewritten points and authorities or briefs.

6. **When Submitted**—When the oral argument is concluded, the case shall be submitted for the decision of the court.

7. **Stipulation as to Time**—The times herein provided for may be shortened or extended by stipulation of parties or order of court, or a justice thereof.

RULE XII

Printing and Paper To Be Uniform—In all cases where a paper or document is required by these rules to be printed, it shall be printed upon similar paper, and in the same style and form (except the numbering of the folios in the margin) as is prescribed for the printing of transcripts.

RULE XIII

1. **Number of Copies To Be Filed**—Besides the original, there shall be filed five copies of all printed transcripts, briefs, and points and authorities, which copies shall be distributed by the clerk.

2. **Briefs May Be Typewritten**—Briefs and points and authorities, instead of being printed, may be typewritten upon the same paper and in the same style and form as is prescribed for typewritten transcripts. [This was subdivision 2, old Rule XXV.]

3. **Number of Copies of Typewritten Transcripts and Briefs To Be Filed and Served**—When typewritten, but one copy of the transcript of the record need be filed in the case, but a copy thereof shall be served upon the opposite party; *provided*, that when the official reporter's certified transcript of the proceedings at the trial is a part of the settled bill of exceptions, no copy of such transcript need be served as a part of the copy of the transcript on appeal. Two copies of the briefs and points and authorities, viz., the first impression and a copy thereof, shall be filed with the clerk, and a copy shall be served on each opposite party who appeared separately in the court below. [See 3, old Rule XXV.]

Zelavin v. Tonopah Development Co., 41 Nev. 1; *Gardner v. Pacific Power Co.*, 40 Nev. 343; *Guisti v. Guisti*, 41 Nev. 349.

RULE XIV

Opinions Recorded—All opinions delivered by the court, after having been finally corrected, shall be recorded by the clerk.

RULE XV

Rehearing—Remittitur to Issue, When—Time May Be Shortened or Extended—All motions for a rehearing shall be upon petition in writing, and filed with the clerk within fifteen days after the final judgment is rendered, or order made by the court, and publication of its opinion and decision. Personal service or service by mail upon counsel of a copy of the opinion and decision shall be deemed the equivalent of publication. The party moving for a rehearing shall, within the time for filing the petition, serve a copy of the petition upon opposing counsel, who within ten days thereafter may file and serve a reply to the petition, and no other argument shall be heard thereon. No remittitur or mandate to the court below shall be issued until the expiration of the fifteen

days herein provided, and decisions upon the petition, except upon special order. The time herein provided for may be shortened or extended, for good cause shown, by order of court.

Case in which second petition for rehearing will not be granted: *Ward v. Pittsburg Silver Peak*, 39 Nev. 103.

Questions raised for first time on petition for rehearing will not be considered: *Nelson v. Smith*, 42 Nev. 302; *In Re Forney's Estate*, 43 Nev.—, 186 Pac. 678.

Exception: 4 *Corpus Juris*. 642.

It has been held that court loses jurisdiction to grant rehearing where petition is filed after remittitur issues: *Fischer v. Lukens*, 178 Pac. 302.

RULE XVI

Opinion To Be Transmitted—Where a judgment is reversed or modified, a certified copy of the opinion in the case shall be transmitted, with the remittitur, to the court below.

RULE XVII

No Paper To Be Taken Without Order—No paper shall be taken from the courtroom or clerk's office, except by order of the court, or of one of the justices. No order will be made for leave to withdraw a transcript for examination, except upon written consent, to be filed with the clerk.

RULE XVIII

Concerning Change of Venue—Additional Notice Given—Appeals from orders granting or denying a change of venue, or any other interlocutory order made before trial, will be heard at any regular or adjourned term, upon three days' notice being given by either appellant or respondent, when the parties live within twenty miles of Carson City. When the party served resides more than twenty miles from Carson City, an additional day's notice will be required for each fifty miles, or fraction of fifty miles, from Carson City. [This was old Rule XXIII.]

Peters v. Jones, 26 Nev. 267.

RULE XIX

Notice of Motion—Except as otherwise provided, in all cases where notice of a motion is necessary, unless, for good cause shown, the time is shortened by an order of one of the justices, the notice shall be five days. [This was old Rule XXIV.]

RULE XX

Payment of Advance Fee Required—Clerk Prohibited from Filing—No transcript or original record shall be filed or cause registered, docketed, or entered until an advance fee of twenty-five dollars is paid into the clerk's office, to pay accruing costs of suit. The clerk of the court is prohibited from filing or registering any record without first having received as a deposit the aforesaid fee. [This was old Rule XXVI.]

RULE XXI

Extending or Shortening Time—Except as otherwise provided in any of the foregoing rules, or when not otherwise controlled by statute, the time provided in any of these rules within which an act shall be done, may be extended or shortened by stipulation of the parties, or, upon good cause being shown, by order of the court or a justice thereof.

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CONSTITUTION OF THE UNITED STATES

113. Rev. Laws, 3890-3894, making it unlawful for any itinerant merchant or peddler to offer goods for sale without first obtaining a license, violates this section. *Ex Parte Taylor and Rounds*, 35 Nev. 507 (131 P. 133).

While, under the commerce clause of the federal constitution, a state may not tax the privilege or act of engaging in interstate commerce, it can tax the carrier's property within the state though chiefly employed in such commerce. *Wells, Fargo & Co. v. State of Nevada*, 39 S. C. R. 62.

Cited, *Nevada-California Power Co. v. Hamilton*, 235 F. 331.

159. Cited, *Eureka Bank Cases*, 35 Nev. 111 (126 P. 655; 129 P. 308).

160. Rev. Laws, 3890-3894, making it unlawful for any itinerant merchant or peddler to offer goods for sale without first obtaining a license, violates the fourteenth amendment and this section. *Ex Parte Taylor and Rounds*, 35 Nev. 507 (131 P. 133).

Cited, *Ex Parte Rovnianek*, 41 Nev. 143 (168 P. 327).

A statute of a state which provides that where, at the time of the accrual of a cause for divorce, the parties shall not be both bona-fide residents, no court shall grant a divorce, unless either party shall have been a bona-fide resident for not less than one year next preceding the bringing of the action, does not violate this section; there being a distinction between citizenship and residence and the rights of citizens and residents, and the constitution guaranteeing no rights to citizens as to divorce. *Worthington v. District Court*, 37 Nev. 214, 218, 243 (142 P. 230. Ann. Cas. 1916E, 1097, L. R. A. 1916A, 696).

174. Cited, *Ex Parte Murray*, 39 Nev. 355 (157 P. 647).

175. Cited, *Vineyard L. & S. Co. v. District Court*, 42 Nev. 24 (171 P. 166).

176. Cited, *Eureka Bank Cases*, 35 Nev. 97 (126 P. 655; 129 P. 308).

Cited, *State v. MacKinnon*, 41 Nev. 192, 195 (168 P. 330).

181. Despite the constitutional amendment depriving the federal courts of jurisdiction of a suit against a state by a private individual, the federal courts may take jurisdiction of a suit to enjoin state or county officers from illegal exactions under color of state tax statutes. *Nevada-California Power Co. v. Hamilton*, 235 F. 317. 321.

185. Cited, *Ex Parte Ah Pah*, 34 Nev. 285 (119 P. 270).

Cited, *Eureka Bank Cases*, 35 Nev. 97 (126 P. 655; 129 P. 308); *Gamble v. Silver Peak*, 35 Nev. 375 (139 P. 936).

Rev. Laws, 3890-3894, making it unlawful for any itinerant merchant or peddler to offer for sale goods without first obtaining a license, violates this section. *Ex Parte Taylor and Rounds*, 35 Nev. 507 (131 P. 133).

Rev. Laws, 5652, is not unconstitutional, since the legislature has power to enact laws to promote healthful conditions of work or freedom from undue oppression; and a contract which the state, in the legitimate exercise of its police power, has the right to prohibit is not within the protection of this section, prohibiting the states from depriving any person of liberty or property without due process of law. *Lawson v. Halifax-Tonopah Mining Co.*, 36 Nev. 600, 604, 605, 608 (135 P. 611; 138 P. 261, Aff. 239 U. S. 632).

Rev. Laws, 5838, as amended, provides for a classification of nonresidents at the time of the accrual of the cause of action for divorce, and the classification is reasonable and does not conflict with this section. *Worthington v. District Court*, 37 Nev. 213, 218 (142 P. 230. Ann. Cas. 1916E, 1097 L. R. A. 1916A, 696).

The provisions of sections 18 to 51, inclusive, do not contemplate the deprivation of property without due process of law; they contemplate the securing to water users their rights, not the taking of the same away. For purposes of administration the enjoyment of such rights may be affected, but only after notice and hearing, and the right to adjudication by the courts is not taken away. *Ormsby County v. Kearney*, 37 Nev. 314, 341, 361, 368 (142 P. 803).

Due process of law is not limited to judicial proceedings, but also comprehends determinations by administrative officers or boards where notice and a hearing are provided. *Id.*

The water law, Stats. 1913, 192, as amended by Stats. 1915, 378, providing that, subject to existing rights, the water of all sources of supply belongs to the public, providing for the appointment of a state engineer, to whom application may be made to appropriate any unappropriated water in a public stream, etc., and providing that the state engineer, on his own initiative, or on application of one or more users of water of any stream, may make an order for the determination of the relative rights of the water users, there being provision for notice.

etc., is not violative of this section, prohibiting the taking of property without due process of law. *Vineyard Land and Stock Co. v. District Court*, 42 Nev. 249 (171 P. 172, 177, 180).

Cited, *Parus v. District Court*, 42 Nev. 236, 253 (174 P. 708, 713, 714).

Section 7 of the prohibition act, Stats. 1919, 1, held not violative of the guarantees of this section as to abridging privileges or immunities of citizens of the United States, due process, and equal protection. *Ex Parte Zwissig*, 42 Nev. 360, 366, 368 (178 P. 20, 21, 22).

Cited, *State v. Tax Commission*, 38 Nev. 114 (145 P. 905).

Cited, *Gay v. District Court*, 41 Nev. 347 (171 P. 156).

Stats. 1913, 155, adding sec. 375½ to crimes and punishments act, providing that it shall be unlawful for any person to have in his possession any hide from which the ears have been removed or the brand obliterated deprives the person of his property without due process of law against the guarantees of this section. *Park v. State*, 42 Nev. 386, 390, 394 (178 P. 390, 392).

Stats. 1903, 207, sec. 1, which provides that "It shall be unlawful for any person, firm, or corporation to make or enter into any agreement, either oral or in writing, by the terms of which any employee of such person, firm or corporation, or any person about to enter the employ of such person, firm, or corporation as a condition for continuing or obtaining such employment shall promise or agree not to become or continue a member of a labor organization, or which promise or agree to become or continue a member of a labor organization," deprives the employer of the liberty to contract as to matters which may be vital to him, and therefore is invalid under the constitutional provision that "no one shall be deprived of life, liberty, or property without due process of law." *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 501, 513-516.

A constructive agreement by a corporation doing business in a state to submit to a void or illegal statute prescribing a mode of serving process, which denies due process of law, cannot be founded on anything less than actual knowledge of the statute, as the presumption that every man knows the law

does not hold him to a knowledge of statutes which for any reason are illegal or void. *King Tonopah Mining Co. v. Lynch*, 232 F. 485, 486, 491, 492.

A method of service of process, though prescribed by state statute is not sufficient, if it does not amount to due process of law. *Id.*

A state may not, by prescribing what shall constitute due process of law, subtract anything from the right recognized and established as due process in the federal constitution. *Id.*

While a state has no power over a non-resident and absent owner, it has complete jurisdiction over his property within its borders, subject to the constitutional restriction that property cannot be taken from its owner except after due process of law, and hence may provide for constructive service by means of which judgment may be obtained and satisfied out of the property in the state belonging to the absent defendant. *Id.*

The fundamental requisites of "due process of law" are notice and opportunity to be heard. *Id.*

The use of a water-distributing plant is itself "property" and is protected against confiscation by the constitution. *Goldfield Con. Water Co. v. Public Service Commission*, 236 F. 979, 981.

The provision of the Nevada water law (Stats. 1913, 192, as amended by Stats. 1915, 378) for notice and hearing, with the right to file exceptions to the determination of the state engineer, even by those who fail or refuse to appear or submit evidence, are sufficient to constitute due process of law, and the act is otherwise constitutional. *Bergman v. Kearney*, 241 F. 885.

There is no want of due process within the fourteenth amendment because valuation by board for taxation being without notice to property owner; the mode of enforcing the tax under these sections being but a judicial proceeding wherein process issues and an opportunity is afforded for a full hearing, and payment being enforced only after there is a judgment sustaining the tax. *Wells, Fargo & Co. v. State of Nevada*, 39 S. C. R. 62, 63.

190. Cited, *Parus v. District Court*, 42 Nev. 236 (174 P. 708).

Additional Amendments to the Constitution of the United States

Income tax.

ARTICLE XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Article XVI was proposed by Congress March 15, 1909, and declared in force February 25, 1913.
Ratified by Alabama, Kentucky, South Carolina, Illinois, Mississippi, Oklahoma, Maryland, Georgia, Texas, Ohio, Idaho, Oregon, Washington, California, Montana, Indiana, Nevada, North Carolina, Nebraska, Kansas, Colorado, North Dakota, Michigan, Iowa, Missouri, Maine, Tennessee, Arkansas, Wisconsin, New York, South Dakota, Arizona, Minnesota, Louisiana, Delaware, and Wyoming.

ARTICLE XVII

Election of senators by people—Vacancies, how filled.

The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the senate the executive authority of such state shall issue writs of election to fill such vacancies; *provided*, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the constitution.

Article XVII was proposed by Congress December 4, 1911, and declared in force May 31, 1913.
Ratified by Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Montana, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

ARTICLE XVIII

Intoxicating liquors, prohibition of.

SECTION 1. After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from, the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislature of the several states, as provided in the constitution, within seven years from the date of the submission hereof to the states by the Congress.

Article XVIII was proposed by Congress December 3, 1917. Ratification proclaimed by the secretary of state of the United States January 29, 1919, in effect one year after said proclamation.

Ratified by Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Since proclamation of secretary of state, the following states have ratified amendment: New Mexico, Tennessee, Vermont, Missouri, Nevada, and Pennsylvania.

STATE ENABLING ACT

CONSTITUTION OF NEVADA

230. Cited. *Worthington v. District Court*, 37 Nev. 218 (142 P. 230, Ann. Cas. 1916E, 1097, L. R. A. 1916A, 696).

232. Cited, *De Remer v. Anderson*, 41 Nev. 302 (169 P. 737).

235. Cited, *Parus v. District Court*, 42 Nev. 249 (174 P. 712).

236. A voluntary statement of petitioner standing in the record uncontradicted, together with other evidence tending to connect him with the death of deceased, held sufficient to warrant the court in denying bail within this section. *Ex Parte Nagel*, 41 Nev. 86 (167 P. 689).

Cited, *State v. McFarlin*, 41 Nev. 107 (167 P. 1011).

237. Amendment to this section set forth at top of page 67 was adopted by the people at the general election of 1912.

In compliance therewith, "An act providing for the prosecution of crimes, misdemeanors and offenses by information," Stats. 1913, 293, was enacted.

Cited, *McComb v. District Court*, 36 Nev. 431 (136 P. 563).

Cited, *State v. Clark*, 36 Nev. 477 (135 P. 1083).

The provisions of sections 18 to 51 of the water law, inclusive, do not contemplate the deprivation of property without due process of law; they contemplate the securing to water users their rights, not the taking of the same away. For purposes of administration the enjoyment of such rights may be affected, but only after notice and hearing, and the right to adjudication by the courts is not taken away. *Ormsby County v. Kearney*, 37 Nev. 314, 341 (142 P. 803).

The privilege of accused under this section, to appear in person or with counsel, may be waived, and, once waived, a judgment will not be reversed because the court at a later date refused to grant a continuance so that counsel might be employed unless the refusal was an abuse of discretion. *State v. MacKinnon*, 41 Nev. 187, 192 (168 P. 330).

Water law, Stats. 1913, 192, as amended by Stats. 1915, 378, is not unconstitutional, as permitting a taking of property without due process of law, in that, should an interested party fail to file objections, to the determination of the state engineer as to water rights, with the clerk of the district court in which the engineer files a copy of his order of determination, and the court enters a decree in accordance with such order, such decree will be tantamount to a taking of property without due process. *Vineyard Land and Stock Co. v. District Court*, 42 Nev. 2, 23, 28, 42, 49, 57 (171 P. 173, 177, 180, 183).

Under this section, women, being "qualified electors," may serve on the grand jury. *Parus v. District Court*, 42 Nev. 229, 232, 252 (174 P. 707, 713).

Stats. 1915, 155, amending the crimes and punishments act, by adding thereto section 375½ providing that it shall be unlawful for any person to have in his possession any hide from which the ears have been removed, or the brand obliterated, deprives a person of his property without due process of law against the guaranties of this section. *Park v. State*, 42 Nev. 386, 394 (178 P. 392).

Stats. 1903, 207, deprives the employer of the liberty to contract as to matters which may be vital to him, and therefore is invalid under this section. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 501, 514.

247. Cited, *Ex Parte Murray*, 39 Nev. 355 (157 P. 647).

250. Amendment to this section, as set forth at bottom of page 69, was adopted by the people at the general election of 1914.

Under this section, women, being "qualified electors," may serve on the grand jury. *Parus v. District Court*, 42 Nev. 229, 235 (174 P. 707, 708).

Cited, *McComb v. District Court*, 36 Nev. 432 (136 P. 563).

252. Stats. 1917, 385, sec. 101, providing for taking of votes of electors in the military service of the United States, is a compliance with this section, and is not void for discrimination against electors in the naval service, or conscripted men in the military service, since "military service" includes every branch of service in either the army or the navy of the United States. *Maclean v. Brodigan*, 41 Nev. 477, 479 (172 P. 375).

257. Proposed amendment to this article, by adding section 9 thereto, as set forth at bottom of page 72, was adopted by the people at the general election of 1912.

In compliance therewith, "An act to provide for the recall of public officers in the State of Nevada," Stats. 1913, 400, was enacted.

258. Cited, *Ex Parte Ah Pah*, 34 Nev. 285 (119 P. 770).

The provisions generally of sections 18 to 51, inclusive, of the water law of 1913 (Stats. 1913, 192), considered for purposes of administration, are not violative of this section, dividing the state government into three coordinate departments. *Ormsby County v. Kearney*, 37 Nev. 315, 316, 341, 357, 361, 369, 384, 385, 392 (142 P. 803).

This section, providing that none of the three departments of government shall exercise functions belonging to the others except

where expressly directed, makes it plain that the district court could be delegated powers other than those expressly mentioned by article 6, section 6, of the constitution. *Gay v. District Court*, 41 Nev. 330, 342 (171 P. 156).

The water law, Stats. 1913, 192, as amended by Stats. 1915, 378, providing that, subject to existing rights, the water of all sources of supply belongs to the public, providing for the appointment of a state engineer to whom application may be made to appropriate any unappropriated water in a public stream, etc., and providing that the state engineer, on his own initiative, or on application of any one or more users of water of any stream, may make an order for the determination of the relative rights of the water users, there being provision for notice, is not violative of this section. *Vineyard Land and Stock Co. v. District Court*, 42 Nev. 2, 27, 28, 42, 62 (171 P. 173, 177, 180).

Vacancies, how filled.

270. SEC. 12. In case of the death or resignation of any member of the legislature, either senator or assemblyman, the county commissioners of the county from which such member was elected shall appoint a person of the same political party as the party which elected such senator or assemblyman to fill such vacancy; *provided*, that this section shall apply only in cases where no general election takes place between the time of such death or resignation and the next succeeding session of the legislature.

[Proposed and passed at the Twenty-ninth Session of the Legislature, Statutes of 1919, page 478.]

275. Rev. Laws, 3457, 3458, making it unlawful to keep a house of ill-fame within 800 yards of a schoolhouse, etc., is not unconstitutional under this section, as embracing matter not covered by the title, "An act concerning public schools and repealing certain acts relating thereto." *Ex Parte Ah Pah*, 34 Nev. 283-285 (119 P. 770).

Cited, *State ex rel. Pacific Reclamation Co. v. Ducker*, 35 Nev. 221 (127 P. 990).

Stats. 1911, 183, the public school act, section 135 of which provided for a tax for the support of the public schools, was not void for embracing a subject not included in the title, contrary to this section. *State ex rel. Eggers v. Esser*, 35 Nev. 429, 435 (129 P. 557).

Provisions in a general appropriation act for the support of the state government, providing for repeals or amendments, of the existing general laws of the state, would be unconstitutional and void as contrary to the provisions of this section. *State ex rel. Abel v. Eggers*, 36 Nev. 372, 375 (136 P. 100).

The title of an act entitled "An act relating to marriage and divorce" is sufficient within this section to justify provisions in the body of the act prescribing the length of residence required before parties may apply for divorce. Notwithstanding this section, a statute may contain several provisions, provided they relate to the subject expressed in the title or are properly connected therewith. *Worthington v. Dis-*

Under this section it was held that provisions for hearing and determination by the state engineer are not in violation of the state constitution, as conferring judicial power on an administrative officer since his determination has none of the finality of a judgment, but is merely a preliminary step in the proceeding which culminates in a final decree of the district court. *Bergman v. Kearney*, 241 F. 885, 896.

263. Cited, *Parus v. District Court*, 42 Nev. 240 (174 P. 709).

266. Under sec. 2, Stats. 1913, 169, creating a board of directors for the state for certain expositions, whose duty it shall be to employ superintendents, clerks and other persons, the position occupied by a superintendent so employed was not an "office" within this section. *State ex rel. Kendall v. Cole*, 38 Nev. 215, 218, 237, 240, 242, 243, 244, 245 (148 P. 551).

trict Court, 37 Nev. 212, 218-221 (142 P. 230, Ann. Cas. 1916E, 1097, L. R. A. 1916A, 696).

Under this section, *Rev. Laws*, 1513, was constitutional. *McBride v. Griswold*, 38 Nev. 56, 60, 61 (146 P. 756).

Rev. Laws, 3831, 3832, authorizing county commissioners, in case of great necessity or emergency to make a temporary loan, etc., does not, in violation of this section, relate to a subject not embraced in its title. *First National Bank of San Francisco v. Nye County*, 38 Nev. 123, 134 (145 P. 932, Ann. Cas. 1917C, 1195).

By the direct provision of this section the legislature cannot amend an act by reference to its title only, but must reenact and publish at length the act revised or amended. *State ex rel. Freudenberger v. Cole*, 38 Nev. 488, 491 (151 P. 944).

Rev. Laws, 4530, provides that the commission shall have authority to employ an expert engineer at a salary of \$3,600 per annum and traveling expenses. Relator was so employed, but after the enactment of Stats. 1913, 404, entitled "An act regulating the salaries of certain state officers" and providing that the annual salary of the chief engineer of the public service commission shall be \$2,500, the state controller refused to draw his warrant in relator's favor at the rate of \$3,600 a year, but only at the rate of \$2,500. Relator sought mandamus, contending that the act of 1913, as an act amending the public service act, violated this section.

Held, that the act of 1913 was valid, it not purporting to be an amendatory act, but clearly an independent act complete in itself, which was not embraced in the constitutional requirement, and might alter the prior statute without referring to it. *Id.*

Stats. 1915, 453, entitled "An act regulating the nomination of candidates by political parties," etc., does not contravene the provisions of this section. *Turner v. Fogg*, 39 Nev. 406, 410 (159 P. 56).

Stats. 1913, 137 entitled "An act relating to compensation of injured workmen," etc., sufficiently embraces within its title the purpose expressed by section 1, subd. b, thereof, making counties and other municipal corporations subject to the act, and therefore does not offend this section. *Nevada Industrial Commission v. Washoe County*, 41 Nev. 437, 442, 449 (171 P. 511).

The provision of this section, that no law shall be revised or amended by reference to its title only, does not render invalid the provision of Stats. 1917, 385, that electors in the military service of the United States may vote in accordance with Stats. 1899, 108, which was repealed by Stats. 1913, 568; revival by title not being prohibited; for an "amendment" is an alteration effecting a change in the draft, or form, or substance of a law already enacted, or of a bill proposed for enactment, but, when the legislative body attempts to revise, it thereby presumes to make additions or changes or corrections to alter or reform something then in force and effect, and "revision" in a legislative sense applies only to a measure, bill, or law then having existing life and force, and cannot, in the nature of things, apply to a nullified or repealed act; and the term "revive," as applied to legislative proceedings, signifies the reconference of valid-

ity, force, and effect, at least the reconference of validity, force, and effect as the revived measure, law, or bill formerly possessed. *Maclean v. Brodigan*, 41 Nev. 468, 473 (172 P. 375).

Cited, *State ex rel. Esser v. District Court*, 42 Nev. 222 (174 P. 1024).

Stats. 1919, 75, organizing the county of Pershing out of a portion of Humboldt County, and certain of its provisions, held not unconstitutional on the ground that such provisions are not embraced by the title, the disputed provisions being incident to the complete organization of the county, and germane to the main object of the act. *Pershing County v. District Court*, 43 Nev. —, (181 P. 961-963).

Unless the validity of a whole statute depends on the constitutionality of one or more provisions not germane to the title, or are so blended with the scope and purpose of the act as a whole as to affect its validity or any other of its provisions, the invalidity of one or more of such provisions does not defeat the general scope and purpose of the act. *Id.*

276. Cited, *Ex Parte Ming*, 42 Nev. 493 (181 P. 319).

277. Cited, *Mighels v. Eggers*, 36 Nev. 371 (136 P. 104).

Cited, *State ex rel. Beebe v. McMillan*, 36 Nev. 383, 385 (136 P. 108).

Under this section it was held that Rev. Laws, 3251, was sufficient to make appropriation for claims arising under it, and that, as the legislature made no appropriation in 1917, respondent's deputy superintendent of public instruction could recover under said section for expenses for the year 1917. *McCracken v. State*, 41 Nev. 49, 54 (167 P. 1001).

Legislative powers restricted.

278. SEC. 20. The legislature shall not pass local or special laws in any of the following enumerated cases—that is to say:

Regulating the jurisdiction and duties of justices of the peace and of constables, and fixing their compensation;

For the punishment of crimes and misdemeanors;

Regulating the practice of courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

Vacating roads, town plots, streets, alleys and public squares;

Summoning and empaneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers;

For the assessment and collection of taxes for state, county, and township purposes;

Providing for opening and conducting elections of state, county, or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities;

Giving effect to invalid deeds, wills, or other instruments;

Refunding money paid into the state treasury, or into the treasury of any county;

Releasing the indebtedness, liability, or obligation of any corporation, association, or person to the state, or to any county, town or city of this state; but nothing in this section shall be construed to deny or restrict the power of the legislature to establish and regulate the compensation and fees of county officers, to establish and regulate the rates of freight, passage, toll, and charges of railroads, toll-roads, ditch, flume and tunnel companies incorporated under the laws of this state or doing business therein.

[Proposed and passed at the Twenty-ninth Session of the Legislature, Statutes of 1919, pages 486, 487.]

Stats. 1907, 355, authorizing a particular county to issue bonds to build a courthouse and a jail is not unconstitutional under this section, nor under sections 21 and 25 requiring the county government system to be uniform, and all laws to be general and of uniform operation throughout the state, where general laws can be made applicable. *State ex rel. Henderson Banking Company v. Lytton*, 31 Nev. 67, 68 (99 P. 855).

Cited, *State ex rel. White v. Dickerson*, 33 Nev. 545 (113 P. 105).

Cited, *Quilici v. Strosnider*, 34 Nev. 19, 21 (115 P. 117).

Cited, *State ex rel. Beebe v. McMillan*, 36 Nev. 388 (136 P. 108).

Cited, *State ex rel. Sparks v. State Bank and Trust Co.*, 37 Nev. 85 (139 P. 505; 142 P. 627).

The provision in the act of February 20, 1913 (Stats. 1913, 10), amending section 22 of the marriage and divorce act of 1861 (Stats. 1861, 94), as amended in 1875 (Stats. 1875, 63), by declaring that when, at the time of the accrual of a cause for divorce, the parties shall not both be bona-fide residents of the state, no court shall grant divorce, unless either party shall have been a bona-fide resident for not less than one year next preceding the commencement of the action, is of general uniform operation throughout the state, and applies the same in every part of the state, and to all persons under similar circumstances, and is not a local or special law within this section. *Worthington v. District Court*, 37 Nev. 213, 218, 225 (142 P. 230. Ann. Cas. 1916E, 1097, L. R. A. 1916A, 696).

Reasonable classifications in a legislative act are not prohibited by this construction. *Id.*

Cited, *Ormsby County v. Kearney*, 37 Nev. 361 (142 P. 803).

Under this section, Rev. Laws, 1513, which is section 13 of an act entitled "An act to create a board of county commissioners in the several counties of the state and to define their duties and powers" and establishing the duties of boards of county commissioners as election officers, was constitutional. *McBride v. Griswold*, 38 Nev. 60, 61 (146 P. 756).

Rev. Laws, 3831, 3832, authorizing the county commissioners, in case of great necessity or emergency, to make a temporary

loan, and requiring them at the next tax levy to make a levy for its payment, does not, in violation of this section, relate to a subject not embraced in the title, "An act relating to county government and the reduction of the rate of county taxation." *First National Bank of San Francisco v. Nye County*, 38 Nev. 123, 134 (145 P. 932, Ann. Cas. 1917C, 1195).

279. Cited, *Worthington v. District Court*, 37 Nev. 218 (142 P. 230, Ann. Cas. 1916E, 1097, L. R. A. 1916A, 696).

Cited, *Ormsby County v. Kearney*, 37 Nev. 361 (142 P. 803).

Stats. 1913, 240, authorizing Elko County to issue bonds for, and to construct and equip a high-school building in the town of Wells, is not a special law violative of this section. *Dotta v. Hesson*, 38 Nev. 1, 2 (143 P. 305).

Rev. Laws, 1513, providing for recount of votes by the board of county commissioners, was not repealed by Stats. 1913, 493; since a general statute will not repeal particular provisions of a former act unless the two conflict irreconcilably. *McBride v. Griswold*, 38 Nev. 56, 59 (146 P. 756).

283. Cited, *Porch v. Patterson*, 39 Nev. 268 (156 P. 439).

284. Cited, *Porch v. Patterson*, 39 Nev. 268 (156 P. 439).

285. Cited, *McComb v. District Court*, 36 Nev. 432, 434, 435 (136 P. 563).

Under this section, women, being "qualified electors," may serve on the grand jury. *Parus v. District Court* 42 Nev. 229, 233, 238, 252, 253 (174 P. 707, 708, 713).

286. Cited, *State ex rel. Kendall v. Cole*, 38 Nev. 236 (148 P. 551).

288. Rev. Laws, 2142, passed pursuant to this section, provides that a homestead selected by the husband and wife shall be exempt from forced sale, and that the selection shall be made by the recordation of a declaration of intent. Const. art. 4, sec. 31, declares that all property of the wife owned before marriage shall be her separate property. The act of 1873, passed pursuant to the constitution, provides in section 1 (Rev. Laws, 2155) that all property of the wife owned before marriage and acquired thereafter by gift, devise, or descent is her separate property, and that

property similarly acquired by the husband should be his separate property, while section 2 (sec. 2156) declares that all other property acquired during the marriage shall be the community property. Section 6, as amended in 1897 (sec. 2160), declares that the husband has entire control over the community property, with absolute power of disposition, but that no deed of conveyance or mortgage of a homestead, regardless of whether a declaration has been filed or not, shall be valid for any purpose, unless both the husband and the wife execute and acknowledge it. Held, that, though the homestead was not registered as required by law, the husband's sole conveyance or incumbrance of it cannot pass title. *First National Bank of Ely v. Meyers*, 39 Nev. 235, 273 (150 P. 308).

Rev. Laws, 4142, provides that a selected homestead shall be exempt from forced sale, and that the selection shall be made by recording intention in writing. Amendment act, Stats. 1897, 24, provides that no deed or mortgage of a homestead, whether a declaration has been filed or not, shall be valid, unless both the husband and the wife executed and acknowledged the same. Held, that although a homestead was not registered as required by law, the husband's sole conveyance or incumbrance of it does not affect the wife's right in the homestead, which could not be alienated unless the instrument was executed and given by both. *First National Bank of Ely v. Meyers*, 40 Nev. 287-297 (150 P. 308, 161 P. 929).

289. Cited, *In Re Cook's Estate*, 34 Nev. 237 (117 P. 27).

See *First National Bank of Ely v. Meyers*, 39 Nev. 235, 40 Nev. 284, under section 288.

The use of the expression "goes to" the wife in Rev. Laws, 2165, different from the expression "belongs to" the husband in section 2164, does not show an intention of the legislature that the interest of the wife in the community should vest only after the husband's death, in view of this section, requiring laws to be passed defining the right of the wife to property held in common with her husband, since "held" does not convey the idea of mere expectancy, but imports ownership. *In Re Williams*, 40 Nev. 241, 258 (161 P. 741, L. R. A. 1917C, 602).

The power of the court given by Rev. Laws, 5841, to make such disposition of the property of the parties as shall appear just and equitable in granting a decree of divorce is limited by this section, Stats. 1864-65, 239, and Stats. 1873, 193, determining the property rights of husband and wife. *Walker v. Walker*, 41 Nev. 4, 8 (164 P. 653).

Under this section and the statutes above cited, fixing the property rights of husband and wife, the dissolution of the marriage does not of itself operate to change the property rights. *Id.*

In consideration of this section, Stats.

1864-65, 239, sec. 12 (Rev. Laws, 2166, 2188, 5841, and 5843), it was held in view of another section of the same act appearing as Rev. Laws, 5843, as declaring that when the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same portion of his lands and property as if he were dead; but in other cases the court shall set apart such portion for her support and the support of their children that shall be deemed just, and as the act of 1861 was passed before the creation of community property, effect cannot be given to it, particularly in view of the construction by the California courts of the later statutes, which must be deemed to have been adopted when the statutes were adopted from that state; hence the decree of divorce in favor of the husband for desertion does not, though there was no adjudication as to property rights, deprive the wife of her rights in the community property. *Johnson v. Garner*, 233 F. 756, 762.

290. Cited, *Porch v. Patterson*, 39 Nev. 266-268 (156 P. 439).

296. Cited, *Parus v. District Court*, 42 Nev. 240 (174 P. 709).

307. Cited, *Ex Parte Melosevich*, 36 Nev. 72 (133 P. 57).

312. Cited, *Parus v. District Court*, 42 Nev. 240 (174 P. 709).

313. Ample provision is thus made for the preserving of joint resolutions which might be adopted in the identical language in which adopted. *Ex Parte Ming*, 42 Nev. 493 (181 P. 324).

314. Rev. Laws, 4486-4494, creating the said bureau, and the office of commissioner of industry, agriculture and irrigation, and defining its objects and purposes, does not, by section 7 appropriating \$25,000 to carry out "the purposes of this act," and providing that all disbursements from it shall be on certificate of the commissioner, approved by the state board of examiners, indicate that such appropriation includes the salary of the commissioner, which section 6 fixes and declares payable in equal monthly installments by the state treasurer on warrants drawn by the state controller; this section, expressly excluding salaries "of officers" fixed by law from the claims against the state which the board of examiners shall pass on, and "purposes" indicating something to be accomplished rather than an existing fact, so that the bureau and office of commissioner were but means for the subsequent accomplishment of the purposes of the act. *State ex rel. Norcross v. Eggers*, 35 Nev. 250, 257 (128 P. 986).

Cited, *State ex rel. Mighels v. Eggers*, 36 Nev. 366 (136 P. 104).

Cited, *State ex rel. Abel v. Eggers*, 36 Nev. 281 (136 P. 100).

Under this section it was held that the moneys of the industrial insurance commission which were in the state treasury was a special fund given to the treasurer in trust, as distinguished from general taxes and revenues of the state, and that the requirements for presentation of claims to the board of examiners and the issuance of warrants by the controller did not apply to claims against the industrial commission. *State ex rel. Beebe v. McMillan*, 36 Nev. 383, 385 (136 P. 108).

315. See *State ex rel. Beebe v. McMillan*, 36 Nev. 383, under section 314.

316. Cited, *State ex rel. Howell v. Wildes*, 34 Nev. 116 (116 P. 595).

Sections 18 to 51, inclusive, of the water law of 1913, are unconstitutional and void in that they attempt to invest the state engineer with powers to affect or destroy the property rights of water appropriators or users in violation of the due-process-of-law provisions of the federal and state constitutions, and because they attempt to invest the state engineer with judicial powers reposed in the courts, in violation of art 3, sec. 1, this section, and art. 6, sec. 6. *Ormsby County v. Kearney*, 37 Nev. 316, 142 P. 803 (McCarran, J., dissenting opinion).

Cited, *Vineyard Land and Stock Company v. District Court*, 42 Nev. 2, 3, 17, 27, 28, 42 (171 P. 169, 173, 177).

Cited, *Bergman v. Kearney*, 241 F. 896, 897, 904.

Jurisdiction of supreme court.

319. SEC. 4. The supreme court shall have appellate jurisdiction in all cases in equity; also in all cases at law in which is involved the title, or the right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand (exclusive of interest) or the value of the property in controversy, exceeds three hundred dollars; also in all other civil cases not included in the general subdivisions of law and equity, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. The court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the state, upon petition by, or on behalf of, any person held in actual custody, and may make such writs returnable, before himself or the supreme court, or before any district court in the state or before any judge of said courts.

In case of the disability or disqualification, for any cause, of the chief justice or either of the associate justices of the supreme court, or any two of them, the governor is authorized and empowered to designate any district judge or judges to sit in the place or places of such disqualified or disabled justice or justices, and said judge or judges so designated shall receive their actual expense of travel and otherwise while sitting in said supreme court.

[Proposed and passed at the Twenty-eighth Session of the Legislature, Statutes of 1917, page 491. Proposed and passed at the Twenty-ninth Session of the Legislature, Statutes of 1919, pages 485, 486. Subject to ratification by the people at the general election of 1920.]

Amendment to this section proposed and passed at the Twenty-eighth Session of the Legislature, March 27, 1917, Statutes of 1917, page 491. Said amendment reading as follows:

Jurisdiction and powers of supreme court.

SEC. 4. The supreme court shall have appellate jurisdiction in all cases in equity; also in all cases at law in which is involved the title, or the right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand (exclusive of interest) or the value of the property in controversy, exceeds three hundred dollars; also in all other civil cases not included in the general subdivisions of law and equity, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. The court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have

power to issue writs of habeas corpus to any part of the state, upon petition by, or on behalf of, any person held in actual custody, and may make such writs returnable, before himself or the supreme court, or before any district court in the state or before any judge of said courts.

In case of the disability or disqualification, for any cause, of the chief justice or either of the associate justices of the supreme court, or any two of them, the governor is authorized and empowered to designate any district judge or judges to sit in the place or places of such disqualified or disabled justice or justices, and said judge or judges so designated shall receive their actual expense of travel and otherwise while sitting in said supreme court.

This section vests the supreme court with appellate jurisdiction in all cases in equity. Rev. Laws, 4832, is to the same effect. Rev. Laws, 4833, empowers the supreme court to review on appeal a judgment in a proceeding commenced in the district court when the matter in dispute is embraced in the general jurisdiction of the supreme court. Rev. Laws, 5329, provides that an appeal may be taken from a final judgment or special proceeding commenced in the court in which the judgment is rendered. Section 6162 provides for petition for the appointment of a guardian for insane persons. Held, that such proceeding is equitable and the judgment appointing the guardian for a mentally enfeebled person is final, so that an appeal lies. *O'Donnell v. District Court*, 40 Nev. 428, 433 (165 P. 759).

Prohibition will not issue to restrain the enforcement of an ordinance not in effect, since there must be a cause pending before the writ will issue. *O'Brien v. Commissioners*, 41 Nev. 90, 95, 101 (167 P. 1007).

The writ of prohibition is not a writ of right, but one of sound judicial discretion to be issued or refused according to the facts of each particular case. *Id.*

Rev. Laws, 5708, providing that the writ of prohibition arrests the proceedings of any court, tribunal, etc., whether exercising functions judicial or ministerial, when such proceedings are without or in excess of jurisdiction, does not enlarge the writ so as to reach proceedings not of a judicial character, and it will not issue to prohibit county commissioners and the sheriff from enforcing an ordinance requiring licenses for selling, etc., liquors in restaurants, etc. *Id.*

By this section the intention of the framers was undoubtedly to confer the right to issue the writ as it had been recognized at common law. *Id.*

The penalty which a city under its charter may prescribe for the violation of an ordinance being such that the offense under the definition of Rev. Laws, 6266, is a misdemeanor, the supreme court has no jurisdiction of an appeal from conviction thereof, its appellate jurisdiction in criminal cases being by this section limited to felony, and it being immaterial that the case was transferred from the police court to the district court because the validity of the tax imposed by the ordinance was attacked; "cases at law" in

which is involved the legality of a tax, of which the supreme court is given appellate jurisdiction, not including a criminal case. *City of Reno v. Dixon*, 42 Nev. 67, 72 (172 P. 368).

321. Cited, *Proskey v. Colonial Hotel Company*, 36 Nev. 84 (133 P. 390).

While errors committed in the exercise of a judicial discretion cannot be reviewed or corrected by mandamus, if the district court erroneously decides that it has no jurisdiction and refuses to hear an appeal from a justice's court pursuant to this section, as by dismissing the appeal, mandamus is the proper remedy to compel it to assume jurisdiction and proceed. *Floyd v. District Court*, 36 Nev. 349, 354 (135 P. 922.)

The provisions of sections 18 to 51, inclusive, of the water law, are not violative of this section, fixing the appellate and original jurisdiction of district courts, in that the determinations made by the state engineer of the relative rights of water users are not made in "cases in equity" or "cases at law" as those terms are used in said section. *Ormsby County v. Kearney*, 37 Nev. 314, 315, 346, 361, 369, 375, 379 (142 P. 803).

Injunction will lie to restrain the state engineer and a district water commissioner from unjustly and unreasonably depriving appropriators of water for irrigating their lands; no redress being afforded the appropriators by the water law (Stats. 1913, 192), inasmuch as the district court cannot take cognizance of the proceedings of the state engineer by way of appeal as therein prescribed, since this section of the constitution restricts the appellate jurisdiction of such court to cases appealed from justices' courts and municipal tribunals. *Knox v. Kearney*, 37 Nev. 399 (142 P. 526).

Under this section and Rev. Laws, 5714, 5726, a justice's court has jurisdiction in actions at law brought by the guardian of a minor where the amount involved does not exceed \$300. *Killgrove v. Morris*, 39 Nev. 224-226 (156 P. 686).

This section gives to district courts original jurisdiction in cases involving the legality of any tax, assessment, or municipal fine, etc.; section 8 requires the legislature to determine the number of justices of the peace in each city, etc., and provides that justices' courts shall not have jurisdiction

of cases conflicting with the jurisdiction of the courts of record; and section 9 requires the legislature to fix by law the jurisdiction of municipal courts. The city charter of Reno (art. 14, sec. 1) created a municipal court, by section 3, gave its jurisdiction as then provided for justices of the peace as to civil or criminal cases for the violation of any ordinance, and by section 6 provided that it should be treated as a justice's court, in case its proceedings should be questioned. Rev. Laws, 5721, relating to transfer of causes from justice's court, provides that parties cannot give evidence on questions involving the legality of any tax, municipal fine, etc. An ordinance imposed a certain license upon every attorney practicing his profession in the city, payable quarterly in accordance with the gross receipts, and thereunder petitioner was convicted in the municipal court and committed. Held, where the issue involved the legality of a tax and the constitutionality of the ordinance imposing the tax, the municipal court had no jurisdiction, and was bound to transfer the proceedings to the district court. *In Re Dixon*, 40 Nev. 228, 233 (161 P. 737).

Cited, *O'Donnell v. District Court*, 40 Nev. 432 (165 P. 759).

Whether or not this section gives the district court jurisdiction of proceedings for removal of county officers, article 7, section 4, of the constitution gives the legislature plenary power to provide procedure therefor, and therefore secs. 2851, 2852, Rev. Laws, giving such jurisdiction, are constitutional. *Gay v. District Court*, 41 Nev. 330, 336, 345, 346 (171 P. 156).

Water law, Stats. 1913, 192, as amended by Stats. 1915, 378, providing that, subject to existing rights, the water of all sources of supply belongs to the public, providing for the appointment of a state engineer, to whom application may be made to appropriate any unappropriated water in a public stream, etc., and providing that the state engineer, on his own initiative or on application of one or more users of water of any stream may make an order for the determination of the relative rights of the water users, there being provision for notice, etc., is not violative of this section, even though a water right is real estate, since the entire proceedings under the water law amount to nothing until a copy of the order of determination of water rights of the state engineer is filed in the office of the clerk of the district court, thus operating as a complaint, the proceedings before the state engineer being nothing more than the routine of preparing and filing the complaint in the district court which invests the latter court with jurisdiction to act. *Vineyard Land and Stock Company v. District Court*, 42 Nev. 2, 25, 42, 45-49, 53-58, 62, 63 (171 P. 166, 172, 177-185).

321. Cited, *Bergman v. Kearney*, 241 F. 890.

323. Under this section, and Rev. Laws, 5714, 5726, a justice court has jurisdiction

in actions at law brought by the guardian of a minor where the amount involved does not exceed \$300. *Killgrove v. Morriss*, 39 Nev. 224, 226 (156 P. 686).

This section, enacted while Stats. 1861, 37, was in force in the territory, providing for the foreclosing of all liens in one action, requires the legislature to fix the powers of justices of the peace, and authorizes it to confer jurisdiction upon them, concurrent with the district courts, of actions to enforce mechanics' liens where the amount does not exceed \$300. Rev. Laws, 5714, is to the same effect, and Rev. Laws, 2224, allows any number of lien claimants to join in the same action and the courts consolidate separate actions; and section 2227 provides that such liens may be enforced by an action in any court of competent jurisdiction, and, as amended by Stats. 1907, 191, applies to mechanic's lien proceedings in justice's court where the sum involved does not exceed \$300. Held, that the words "sum involved" mean the sum involved in the several liens embraced in a suit, and that a justice's court had no jurisdiction of an action to foreclose mechanics' liens, where the total amount of the liens exceeds \$300, notwithstanding that each of the liens is for a less amount. *Phillips v. Snowden Placer Company*, 40 Nev. 66, 72 (160 P. 786).

See *In Re Dixon*, 40 Nev. 228, under section 321.

324. See *In Re Dixon*, 40 Nev. 228, under section 321.

327. Cited, *Eureka Bank Cases*, 35 Nev. 149, 150 (126 P. 655, 129 P. 308).

Remarks by the trial court, upon admitting in evidence a purported dying declaration, as to the weight of the declaration, and on the question whether it was made when the declarant believed death imminent, are erroneous, invading the province of the jury in violation of this section. *State v. Scott*, 37 Nev. 413, 431, 438 (142 P. 1053).

328. This section is specific as to the authority under which criminal actions may be instituted. Such are to be conducted in the name of the state only and are to be instituted by the authority of the state only. *Jones v. District Court*, 41 Nev. 530 (173 P. 887).

329. Under this section and Rev. Laws, 4943, providing that there shall be but one form of civil action for the enforcement of protection of private rights, and Rev. Laws, 5501, providing that there shall be but one action for the recovery of any debt or the enforcement of any right secured by a mortgage or lien, and Rev. Laws, 5518, declaring that a mortgage shall not be deemed a conveyance, and Rev. Laws, 5603, declaring that the provisions of this act relative to civil actions, appeals, and new trials shall apply to proceedings in forcible entry and detainer, a defendant in an action under Rev. Laws, 5588, for unlawful detainer

may show the nonexistence of the relation of landlord and tenant essential to the maintenance of the action, and may show that an instrument in form a lease was a part of another instrument, and that the two constituted a mortgage, and thereby defeat the action. *Yori v. Phenix*, 38 Nev. 277, 283 (149 P. 180).

We are mindful that our constitution and statute have broken down the barrier of the common law, in so far as the form of a civil action is concerned. *Walser v. Moran*, 42 Nev. 119 (173 P. 1149; 180 P. 492).

334. Cited, *Gay v. District Court*, 41 Nev. 345 (171 P. 156).

Fiscal year.

348. SECTION 1. The fiscal year shall commence on the first day of July of each year.

[Proposed and passed at the Twenty-ninth Session of the Legislature, Statutes of 1919, page 486.]

349. Cited, *State ex rel. Eggers v. Esser*, 35 Nev. 434 (129 P. 557).

State may contract debts, limitation, exception.

350. SEC. 3. The state may contract public debts; but such debts shall never, in the aggregate, exclusive of interest, exceed the sum of one per cent of the assessed valuation of the state, as shown by the reports of the county assessors to the state controller, except for the purpose of defraying extraordinary expenses, as hereinafter mentioned. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein; and every such law shall provide for levying an annual tax sufficient to pay the interest semiannually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes postponed or diminished until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the state, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect, except in cases of money borrowed to repel invasion, suppress insurrection, defend the state in time of war, or, if hostilities be threatened, provide for the public defense.

[As amended. Proposed and passed at the Twenty-sixth Session of the Legislature, March 14, 1913, Statutes of 1913, page 585; agreed to and passed at the Twenty-seventh Session, February 8, 1915, Statutes of 1915, page 516; approved and ratified by the people at the general election of 1916.]

352. To put this section into effect Stats. 1913, 106, and Stats. 1915, 316, were enacted.

Under this section and Rev. Laws, 3621, it was held, that where \$100 worth or more of labor has been expended on a patented mining claim during any one year and prior to the time of assessment, the mine is exempt from taxation, except upon the proceeds thereof. *Goldfield Con. Mines Co. v. State*, 35 Nev. 180-182 (127 P. 77).

Cited, *State ex rel. Eggers v. Esser*, 35 Nev. 436 (129 P. 557).

Cited, *Esmeralda County v. Mineral County*, 37 Nev. 182 (141 P. 73).

Cited, *State ex rel. C. P. R. R. v. Nevada Tax Commission*, 38 Nev. 114 (145 P. 905).

Cited, *Goldfield Con. M. & T. Co. v. Old Sandstorm Co.*, 38 Nev. 436 (150 P. 313).

335. Cited, *Gay v. District Court*, 41 Nev. 345 (171 P. 156).

336. Cited, *Gay v. District Court*, 41 Nev. 345 (171 P. 156).

337. Whether or not Const. art. 6, sec. 6, gives the district court jurisdiction of proceedings for removal of county officers, this section gives the legislature plenary power to provide procedure therefor and therefore secs. 2851, 2852, giving such jurisdiction, are constitutional. *Gay v. District Court*, 41 Nev. 330, 336, 337, 345, 346 (171 P. 156).

345. Cited, *City of Reno v. Stoddard*, 40 Nev. 543 (167 P. 317).

This section and Rev. Laws, 3621, 3622, authorize and direct that all property of every kind, character, and nature not specifically exempted shall be subject to taxation, and authorize a tax on the intangible property of an express company engaged in interstate and intrastate business. *State v. Wells, Fargo & Co.*, 38 Nev. 505, 529 (150 P. 836).

Held, that the constitutional amendment of 1906 was self-executing, at least as to the provision for taxation of patented mines, and absolutely nullified Stats. 1905, 81, so that an assessment thereunder in 1909 was invalid. *Wren v. Dixon*, 40 Nev. 170, 184-186, 198 (161 P. 722, 167 P. 324, Ann. Cas. 1918D, 1064).

Under this section, a patented mine cannot be assessed at less than \$500 if no labor has been performed, and a patented mine

upon which labor has been performed is exempt from taxation except on the proceeds thereof, and, in the absence of any saving clause, an assessment of \$10 per acre under Stats. 1905, 81, pursuant to this section prior to the amendment of 1906, was invalid. *Id.*

Where an assessment on a patented mining claim at \$10 per acre under Stats. 1905, 81, expressly following this section as amended in 1902, was void under the amendment of this section in 1906, the tax sale under the assessment was void. *Id.*

Lands and funds dedicated to support of education.

355. SEC. 3. All lands, including the sixteenth and thirty-sixth sections in any township donated for the benefit of public schools in the act of the thirty-eighth Congress to enable the people of Nevada Territory to form a state government, the thirty thousand acres of public lands granted by an act of Congress, approved July second, A. D. eighteen hundred and sixty-two, for each senator and representative in Congress, and all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this state, and also the five hundred thousand acres of land granted to the new states under the act of Congress distributing the proceeds of the public lands among the several states of the Union, approved A. D. eighteen hundred and forty-one; *provided*, that Congress make provision for or authorize such diversion to be made for the purpose herein contained; all estates that may escheat to the state; all of such per centum as may be granted by Congress on the sale of lands; all fines collected under the penal laws of the state; all property given or bequeathed to the state for educational purposes, and all proceeds derived from any or all of said sources, shall be and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other funds for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties as the legislature may provide by law; and the legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources, in United States bonds, or the bonds of this state, or the bonds of other states of the Union, or the bonds of any county in the State of Nevada, or in loans at a rate of interest of not less than six per cent per annum, secured by mortgage on agricultural lands in this state of not less than three times the value of the amount loaned, exclusive of perishable improvements, of unexceptional title and free from all encumbrances, said loans to be under such further restrictions and regulations as may be provided by law; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and provided further*, that such portion of said interest as may be necessary may be appropriated for the support of the state university.

[As amended. Proposed and passed at the Twenty-fourth Session of the Legislature, March 3, 1909, Statutes of 1909, page 340; agreed to and passed at the Twenty-fifth Session of the Legislature, February 14, 1911, Statutes of 1911, page 463, and approved and ratified by the people at the general election of 1912.]

[As amended. Proposed and passed at the Twenty-sixth Session of the Legislature, March 26, 1913, Statutes of 1913, page 591; agreed to and passed at the Twenty-seventh Session of the Legislature, February 4, 1915, Statutes of 1915, page 518, and approved and ratified by the people at the general election of 1916.]

In compliance with the amendment to this section, "An act to create a state board of investment of the state permanent school fund, and to determine its powers and duties in reference thereto, and other matters

properly connected therewith, and to repeal all acts in conflict therewith," Stats. 1913, 252, was enacted.

358. Cited. *State ex rel. Eggers v. Esser*, 35 Nev. 434 (129 P. 557).

Official oath.

370. SEC. 2. Members of the legislature, and all officers, executive, judicial, and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath:

"I,....., do solemnly swear (or affirm) that I will support,

protect and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of....., on which I am about to enter (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury."

[Amended by striking out the following: "and, further, that I do this with a full determination, pledge and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel; nor been knowingly the bearer of such challenge or acceptance, since the adoption of the constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly in or about any such duel during my continuance in office." Proposed and passed at the Twenty-fifth Session of the Legislature, March 18, 1911, Statutes of 1911, page 458; agreed to and passed at the Twenty-sixth Session of the Legislature, February 3, 1913, and approved and ratified by the people at the general election of 1914.]

Where a doubt may exist as to the proper construction to be placed on a constitutional or statutory provision, courts will

give weight to the construction placed thereon by other coordinate branches of the government. *State ex rel. Kendall v. Cole*, 38 Nev. 215, 223, 224 (148 P. 551).

Who eligible to office.

371. SEC. 3. No person shall be eligible to any office who is not a qualified elector under this constitution. No person who, while a citizen of this state, has, since the adoption of this constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this state, or who has acted as second, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to hold any office of honor, profit or trust; or enjoy the right of suffrage under this constitution. The legislature shall provide by law for giving force and effect to the foregoing provisions of this section; *provided*, that females over the age of twenty-one years, who have resided in this state one year, and in the county and district six months next preceding any election to fill either of said offices, or the making of such appointment, shall be eligible to the office of superintendent of public instruction, deputy superintendent of public instruction, school trustee, and notary public.

[As amended. Proposed and passed at the Twenty-fourth Session of the Legislature, March 12, 1909, Statutes of 1909, page 349; agreed to and passed at the Twenty-fifth Session, February 21, 1911, Statutes of 1911, page 454; and approved and ratified by the people at the general election of 1912.]

See Stats. 1913, 31, making females, otherwise qualified, eligible for appointment as notaries public.

Cited, *State ex rel. Kendall v. Cole*, 38 Nev. 237 (148 P. 551).

Cited, *Parus v. District Court*, 42 Nev. 240 (174 P. 709).

383. Under this article, a proposed constitutional amendment need not be entered on the journal in full; it being sufficient if it be entered by an identifying reference. *Ex Parte Ming*, 42 Nev. 472, 480, 492 (181 P. 319-321).

385. Cited, *Pershing County v. District Court*, 43 Nev. — (181 P. 961).

386. That a statute has for years been enforced by the courts, without its constitutionality being challenged, may be considered as a recognition of its constitutionality, and courts will seldom entertain question of the constitutionality of a statute recognized as valid in the adjudication of rights, and

when the invalidity of the statute would lead to serious consequences. *Worthington v. District Court*, 37 Nev. 212, 220 (142 P. 230, Ann. Cas. 1916E, 1097, L. R. A. 1916A, 696).

411. Cited, *Parus v. District Court*, 42 Nev. 240 (174 P. 709).

412. Held, that, while this article declares that it shall be self-executing, yet it does not impose upon the secretary of state the duty to file a referendum petition for the submission of an act of the legislature to the voters of a county at the next general election, and hence the filing of such a petition cannot be coerced by mandamus; for, though a constitutional provision declares it shall be self-executing, yet, if it does not provide for the manner of its execution, the execution must be provided for by statute. *State ex rel. Dotta v. Brodigan*, 37 Nev. 37-42 (138 P. 914).

While it is provided that the provisions of this article "shall be self-executing, but legislation may be enacted to facilitate its

operation," the further provision that "the legislature may provide by law for the manner of exercising the initiative and referendum powers as to county and municipal legislation" makes it apparent that it was intended that further legislation should be enacted for carrying into effect that part relating to county matters, as the article itself makes no such provision. *Id.*

The provisions of section 3 of this article that "the second power reserved by the people is the referendum, which shall be exercised in the manner provided in sections 1 and 2" apply to state elections. *Id.*

413. Section 3, proposed to be added to this article, as set forth on pages 122, 123, was adopted by the people at the general election of 1912.

To put this section into effect, "An act to provide for submitting local and special legislation for approval by the qualified electors of any county of the State of Nevada in accordance with the referendum provisions of the constitution," Stats. 1915, 157, was enacted.

See *State ex rel. Dotta v. Brodigan*, 37 Nev. 37-42, under section 412.

413. Stats. 1919, 75, creating and organizing the county of Pershing out of a portion of Humboldt County, is not a local law "in and for" Humboldt County, making necessary referendum to the voters of such latter county under this section. *Pershing County v. District Court*, 43 Nev. — (181 P. 961, 962).

NEVADA CONSTITUTIONAL DEBATES

Page 285 cited, *Porch v. Patterson*, 39 Nev. 263 (156 P. 439).

Page 286 cited, *Porch v. Patterson*, 39 Nev. 263 (156 P. 439).

Page 653 cited, *Killgrove v. Morriss*, 39 Nev. 227 (156 P. 686).

Page 688 cited, *Phillips v. Snowden Placer Co.*, 40 Nev. 73 (160 P. 786).

Page 689 cited, *Phillips v. Snowden Placer Co.*, 40 Nev. 74 (160 P. 786).

Page 691 cited, *Phillips v. Snowden Placer Co.*, 40 Nev. 73 (160 P. 786).

Page 700-702 cited, *Phillips v. Snowden Placer Co.*, 40 Nev. 75 (160 P. 786).

AGRICULTURE AND HORTICULTURE

432. Districts established.

SECTION 1. The counties of Ormsby, Douglas and Storey shall constitute Agricultural District No. 1; the counties of Esmeralda and Nye shall constitute Agricultural District No. 2; the county of Humboldt shall constitute Agricultural District No. 3; the county of Elko shall constitute Agricultural District No. 4; the counties of Lyon and Mineral shall constitute Agricultural District No. 5; the counties of Eureka, Lander and White Pine shall constitute Agricultural District No. 6; the county of Churchill shall constitute Agricultural District No. 7; and the counties of Lincoln and Clark shall constitute Agricultural District No. 8. *As amended, Stats. 1889, 48; 1913, 257.*

440. Counties may aid.

SECTION 1. For the purpose of aiding each or any district agricultural association within any county or counties of this state, now or hereafter formed under the laws of this state, which shall hereafter annually hold, within any county or counties comprising said agricultural district, a fair for exhibition in successfully carrying out the purposes for which it has been organized, the boards of county commissioners of the several counties of this state are hereby authorized to appropriate any money or moneys out of the general fund of their respective counties to aid any such district agricultural association, composing any agricultural district of which said county or counties may be a part. *As amended, Stats. 1913, 105.*

445. Repealed, Stats. 1915, 247.

465-8. Repealed, Stats. 1917, 243.

471-4. Repealed, Stats. 1917, 40.

An Act providing for the better prevention, control and extermination of infectious, contagious and destructive diseases, parasites and insect pests, affecting animals, poultry, bees or agricultural or horticultural plants, trees or shrubs, injurious to any industry in the state, and other matters relating thereto; and to repeal an act entitled "An act providing for the appointment of a state veterinarian, defining his duties and fixing his compensation—Governor to appoint," approved March 15, 1905, and all acts and parts of acts in conflict with the provisions of this act.

Approved March 31, 1913, 452

For prevention of disease.

SECTION 1. For the better prevention, control, and extermination of infectious, contagious, or destructive diseases, parasites or insect pests, affecting poultry, bees, or agricultural or horticultural plants, trees, or shrubs, injurious to any industry in the state, the governor, with the advice of the state quarantine officer, or otherwise, is hereby empowered to proclaim and enforce quarantine against any state or any portion of any state, with respect to the importation into Nevada, or against any county or any portion of any county, farm, nursery, or apiary within the state, with respect to the exportation therefrom to any other part of the state, of any poultry, bees, or agricultural or horticultural crops, products, seeds, plants, trees or shrubs, or any article (hereinafter for convenience referred to as commodity) infected with, or which may have been exposed to, infectious, contagious, or destructive diseases, or infected with parasites or insect pests, or the eggs or larvæ thereof, dangerous to any industry

in the state; and to formulate and enforce such rules and regulations as may be necessary for the proper carrying out of the provisions of this act. The word "plants," as herein used, shall be construed to mean and include any and all farm, field, and garden crops grown in the state. The word "trees," as herein used, shall be construed to mean and include any and all fruit, shade, and ornamental trees. The word "shrubs," as herein used, shall be construed to mean and include all fruit-producing, ornamental, or useful shrubs and bushes. *As amended, Stats, 1915, 424.*

Stats. 1913, 453, secs. 2, 3 and 4 repealed, Stats. 1915, 424.

State quarantine officer to be notified.

SEC. 5. It is hereby made the duty of each and every person in the state owning, possessing, or having upon his premises, or any premises under his control, lease, supervision, or management, any poultry, bees, or agricultural or horticultural plants, trees, or shrubs, as heretofore defined, immediately upon the appearance thereamong of any unknown disease, or disease known to be, or which by him reasonably should be suspected of being, infectious, contagious, or destructive; or of any parasite or insect pest, known to be, or which by him reasonably should be suspected of being, injurious to any industry in the state, immediately to notify the state quarantine officer, and the neglect or failure so to do shall constitute a misdemeanor, and on conviction thereof the person so offending shall be fined in any sum not exceeding one hundred dollars. *As amended, Stats. 1915, 424.*

Quarantine officer to issue bulletin.

SEC. 6. It shall be the duty of the state quarantine officer to prepare, or cause to be prepared and printed, such circulars describing and illustrating the appearance and characteristics of such contagious, infectious, or destructive diseases, parasites, or insect pests as in his judgment is necessary and desirable. *As amended, Stats. 1915, 425.*

Quarantine officer to act.

SEC. 7. Whenever it shall appear to the state quarantine officer that any infectious, contagious or destructive disease, parasite or insect pest affecting animals, poultry, bees or agricultural or horticultural plants, trees or shrubs has appeared in the state, injurious or threatening injury to any industry, it shall be the duty of such state quarantine officer immediately to make, or cause to be made, investigation to determine the fact and thereupon promptly to take action and adopt measures for the control and extermination thereof, and the prevention of the spread of the same; *provided*, that the board of county commissioners of such county shall provide for all the necessary traveling, living and other needful expenses connected therewith.

Quarantine to be established.

SEC. 8. If the quarantine of any county or portion of any county, farm, nursery, or apiary is required, said state quarantine officer shall immediately issue an emergency quarantine order, which shall be effective for forty-eight (48) hours, at the end of which time it shall be void, unless confirmed by the governor. The state quarantine officer, or any agent appointed by him for such purpose, shall have authority to enter upon any premises for the purpose of inspection, with respect to the existence or suspected existence of any such disease, parasite, or insect pest, or the germs, eggs, or larvæ thereof, and to make such inspection as thorough as may be deemed proper without let or hindrance from the owner or person in possession or in charge thereof. *As amended, Stats. 1915, 425.*

Powers of quarantine officer.

SEC. 9. When such disease, parasite, or insect pest, or the eggs or larvæ thereof, is discovered upon any premises the state quarantine officer is hereby empowered to employ any and all means in his judgment necessary for the control, extermination, and prevention of the spread of the same. He may give explicit directions to the owner, or person in charge thereof, relating to what procedure he shall take with respect to the treatment, control, and extermination thereof and prevention of the spread of the same, and such instructions shall be mandatory upon such person, and he shall perform the same within a certain time to be specified, and the failure or refusal of any such person so to do shall constitute a misdemeanor, and on conviction thereof the person so offending shall be fined in any sum not exceeding five hundred dollars. On such failure or refusal, or with the consent of the owner or person in possession or charge thereof, or in case of emergency, or on his own initiation, he, or any agent authorized by him so to do, may enter upon such premises and take charge thereof, and conduct such treatment, control, extermination, or prevention from spreading of any such disease, parasite, or insect pest, and all costs thereof shall be borne by the owner of such premises or property. On the neglect or refusal of such owner promptly to pay the same, on presentation of an itemized bill therefor, certified to by said state quarantine officer, said cost shall attach as a lien against any property of such owner within the state, and the district attorney of the county shall forthwith proceed to levy an attachment against such property for the amount due, plus the cost of legal procedure, and collect the same by foreclosure proceedings. *As amended, Stats. 1915, 425.*

Further duties of quarantine officer.

SEC. 10. Whenever in the opinion of the state quarantine officer, any general or special measures of precaution are necessary to be taken to prevent the introduction or spread of any such disease, parasite, or insect pest, beyond any premises where the same may have appeared, said state quarantine officer shall prepare explicit directions as to such measure, and notify all parties, directed to comply therewith, by letter, circular, or by publication. Where notice by publication in any county is deemed necessary by said state quarantine officer, he shall forward a copy of such notice to the chairman of the board of county commissioners of such county requesting that the same be published in one or more newspapers published in such county once a week for four consecutive weeks; and it shall be the duty of the board of county commissioners to cause the same forthwith to be so published, and the cost of such publication shall be paid by the county in the usual manner as other county advertising. And such notice, to all parties addressed, shall be mandatory for the performance of, and compliance with, such measures of precaution, according to such directions and within the time limits, if any, therein specified. It shall be the duty of the state quarantine officer to see that all persons comply therewith, and on the neglect or refusal of any so to do, promptly to notify the district attorney, with the names of the persons so neglecting or refusing. Said district attorney shall call the same to the attention of the board of county commissioners at its next succeeding meeting, and it shall be the duty of said board, and it is hereby fully authorized and empowered, to take such suitable action as in its opinion is necessary and proper to enforce the performance of, or compliance with, such measures of precaution with respect to the property or premises of each of said parties so neglecting or refusing. And in pursuance whereof said board may direct the sheriff of the county to carry out and enforce its order, and the costs thereof shall be borne by the owner of such property or premises; and on the refusal of

such owner promptly to pay the same on presentation of an itemized bill, certified to by the sheriff, said costs shall attach as a lien against any property of said owner within the state, and the district attorney of said county shall forthwith institute proceedings to foreclose such lien, together with the costs of legal procedure. *As amended, Stats. 1915, 426.*

Printing.

SEC. 11. All necessary printing required by said state quarantine officer shall be printed at the state printing office, and five thousand copies of any circular mentioned in section 7 of this act may be so printed, but no other printed matter shall exceed the number prescribed by law.

Certain act not affected.

SEC. 12. That certain act entitled "An act regulating the sheep industry in the State of Nevada, creating a state board of sheep commissioners, defining their duties and prescribing their compensation," approved March 26, 1907, together with all acts amendatory thereof or supplemental thereto, shall not be deemed to be affected by the provisions of this act.

Act repealed.

SEC. 13. An act entitled "An act providing for the appointment of a state veterinarian, defining his duties and fixing his compensation—Governor to appoint," approved March 15, 1905, and all other acts and parts of acts in conflict with the provisions of this act are hereby repealed.

An Act providing for interstate and intrastate quarantine with respect to domestic animals and other live stock, poultry, bees, and agricultural and horticultural crops, products, seeds, plants, trees or shrubs, or any article infected with, or which may have been exposed to, infectious, contagious or destructive diseases, or infested with parasites, or insect pests, or the eggs or larvæ thereof, dangerous to any industry in the state; and other matters relating thereto.

Approved March 31, 1913, 456

Governor may proclaim quarantine.

SECTION 1. The governor is hereby authorized and empowered to proclaim and enforce quarantine against any state, or any portion of any state, with respect to the importation into Nevada; or against any county or portion of any county, farm, nursery or apiary within the state, with respect to the exportation therefrom to any other part of the state, of any domestic animals or other live stock, poultry, bees, or agricultural or horticultural crops, products, seeds, plants, trees or shrubs or any article (hereinafter for convenience referred to as commodities) infected with, or which may have been exposed to, infectious, contagious or destructive diseases, or infested with parasites, or insect pests, or the eggs or larvæ thereof, dangerous to any industry in the state. In any criminal proceedings arising under this act, proof that any commodity, interdicted by proclamation of quarantine from import or export, was imported or exported in violation of quarantine, shall be deemed proof, within the meaning of this act, that the same was diseased, exposed to disease, or infested as aforesaid. The words "importation" and "exportation," as herein used, shall be construed to mean and include the transportation of any such commodity by any railroad, express company or other common carrier, or by any person or persons as baggage or by vehicle or automobile, or the driving, leading or permitting to run at large of the same. The word farm, as herein used, shall be held and construed to mean and include any farm, stock range, stockyards, dairy, lot, or other premises not otherwise enumerated.

Interstate and intrastate quarantine.

SEC. 2. Whenever it shall appear to the state quarantine officer, by petition of any three citizens, or otherwise, that any industry in the state is endangered by importations from any other state of any commodity mentioned in section 1 of this act; or by exportations from any county, portion of any county, farm, nursery, or apiary within the state, to other parts of the state, of any such commodity, he shall at once take steps to ascertain the facts thereof, as hereinafter provided, and if in his opinion the facts so warrant, he shall by proclamation declare such state, or any portion of such state, in the first instance, quarantined from further importations into Nevada of any such commodity; or any such county, or portion of such county, farm, nursery, or apiary, in the second instance, quarantined from exportations of any such commodity to other parts of the state; which quarantine shall remain effective unless vacated by order of the governor of the state within forty-eight (48) hours, or until said quarantine is raised by proper authority. *As amended, Stats. 1915, 332.*

SEC. 3. Stats. 1913, 457, repealed, Stats. 1915, 332.

Quarantine proclamation mailed.

SEC. 4. When quarantine is so declared against importations from any state, or any portion of a state, of any commodity referred to in section 1 of this act a certified copy of such proclamation shall be mailed by registered mail to each of the following: To the governor of such state; the United States quarantine officer having federal jurisdiction over the same character of quarantine; and to the state agent of any interstate railroad, express company or other common carrier over which, or by which, such commodity might be transported.

Notice to county authorities.

SEC. 5. When quarantine is declared against any county or portion of any county, farm, nursery or apiary within the state, forbidding exportations therefrom of any commodity mentioned in section 1 of this act, a certified copy of such proclamation shall be mailed by registered mail to each of the following: To the sheriff; chairman of the board of county commissioners; and county clerk of such county, and if a single farm, nursery or apiary be quarantined, to the owner or resident manager thereof. The governor may, in his discretion, cause a copy of such proclamation to be published in some newspaper of general circulation published within the county, once a week for four consecutive weeks, unless said quarantine is sooner raised, as notice to all concerned.

Penalties for violation.

SEC. 6. Any person, or any officer, agent or employee of any corporation, who shall import or export, or who shall insist in importing or exporting, as a principal or accessory, any commodity mentioned in section 1 of this act, forbidden to be imported or exported by any proclamation of quarantine, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished as prescribed in section 6285, Revised Laws of Nevada. Any railroad company, any express company, or other common carrier, which shall carry, haul or transport into Nevada from any state, or portion of any state, quarantined against, or from any county, portion of any county, farm, nursery or apiary within the state, under quarantine, to any other part of the state, any commodity mentioned in section 1 of this act, forbidden to be so imported or exported, shall be liable for any and all damages occurring by reason of such importation or exportation, and which may be recovered by action against such railroad company, express company or common carrier brought in any court of competent jurisdiction

within two years after the date of such offense or offenses, if more than one. Such action shall be instituted in the name of the state, for and on behalf of the person or persons, firms or corporations suffering injury, and the attorney-general shall prosecute the same.

To cooperate with federal authorities.

SEC. 7. In so far as practicable, the governor, or state quarantine officer, in directing the enforcement of quarantine, shall cooperate with the federal authorities. The state quarantine officer is hereby authorized and empowered to exercise all needful authority required for the proper and efficient enforcement of quarantine; to make arrests of persons violating the same, or suspected of such violation, and to examine any premises or any shipment or consignment suspected of containing any interdicted commodity within the meaning of this act, and may open any container thereof and inspect the same. If such shipment or consignment prove to be an interdicted commodity as aforesaid, he shall have power to require any railroad, express company, or other common carrier immediately to reshhip such consignment back to point of origin, if the same has not yet been delivered to the consignee, and the failure or refusal of any railroad company, express company, or other common carrier promptly so to do shall render such company so offending liable to fine in any sum not less than five hundred dollars nor more than five thousand dollars, and which may be collected by proceedings instituted by the state and prosecuted by the attorney-general in any court of competent jurisdiction, and any property of the defendant within the state may be levied on and sold in satisfaction of the judgment. *As amended, Stats. 1915, 332.*

Commodity may be fumigated or destroyed, when.

SEC. 8. Any commodity mentioned in section 1 of this act forbidden to be imported or exported by any proclamation of quarantine, wherever the same may be located, if in the opinion of the quarantine officer endangering any industry of the state, may be fumigated, disinfected, treated, or destroyed, as the governor may authorize such quarantine officer so to do; *provided*, that any property so ordered to be destroyed, if acquired by the owner of the same came into his possession prior to the date of the proclamation of quarantine, before being destroyed shall be appraised as to its value by two disinterested appraisers, one to be appointed by the owner thereof, or if he be absent, by his agent, manager or foreman; one by said quarantine officer, and if the two so chosen cannot agree, they shall name a third appraiser, and if unable to agree upon such third appraiser, said quarantine officer may name some disinterested person to name a third appraiser, and two of the three so named as appraisers, agreeing upon the valuation of the property destroyed, the same shall be final. Said valuation so appraised shall be divided into three equal parts; one part of which the owner shall lose, one part shall be paid to him by the county wherein the property is situated, by order of the board of county commissioners from the general fund of the county, on a certified copy of such appraisement, the same as other bills are paid; and one-third by the state, on a certified copy of such appraisement, attested by the quarantine officer and approved by the state board of examiners, when the state controller shall draw his warrant and the state treasurer pay the same from the general fund in the state treasury. But no property destroyed under the provisions of this section, if acquired, or the same came into possession of the owner, after the date of such proclamation of quarantine, shall be subject to such part payment by the county or by the state. All costs of fumigation, disinfection or treatment ordered to be performed by said quarantine officer shall be borne by the owner of such commodity, and he, or in his absence, his

agent, manager or foreman, shall perform the same promptly and exactly as instructed and not otherwise, and the refusal or neglect so to do shall constitute a misdemeanor, and such owner, agent, manager or foreman, so delinquent, on conviction thereof, shall be punished as provided in section 6285, Revised Laws of Nevada. In such case said quarantine officer, or any person deputized by him, may enter upon such premises and perform such fumigation, disinfection or treatment, and all the costs thereof shall attach as a lien against any property of such owner within the state. On the neglect or refusal of such owner promptly to pay the same on presentation of an itemized bill certified to by said quarantine officer or his deputy, the district attorney of the county shall forthwith proceed to levy an attachment against any property of such owner within the state for the amount due plus the costs of legal procedure, and proceed to collect the same by foreclosure proceedings.

Peace officers to assist quarantine officer.

SEC. 9. The sheriff and all peace officers of any county when called upon by said quarantine officer, and the state police likewise, shall aid and assist him in the enforcement of quarantine and in the arrest of any person accused of violating the same, and the district attorney of any county in which any person is charged with a misdemeanor under this act shall prosecute the same.

Secs. 10 and 11, Stats. 1913, 467, repealed, Stats. 1915, 333.

Each section declared independent.

SEC. 12. Each section of this act and every part of each section is hereby declared to be independent sections, and parts of sections, and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to affect any other section or any part thereof.

Sec. 13, Stats. 1913, 461, repealed, Stats. 1915, 333.

Who to administer act and designate quarantine officer.

SEC. 15. The president and board of regents of the University of Nevada are hereby designated the authority to administer this act. They shall have power to designate the state quarantine officer, who shall be in charge of the laboratory of the university, known as the state veterinary control service. They shall appoint a properly qualified entomologist to advise with the state quarantine officer in all matters in which the scientific knowledge of an entomologist is essential. The appointment of the state quarantine officer shall be effective when approved by the governor. *Added, Stats. 1915, 333.*

An Act to promote the horticultural interests of the State.

Approved March 10, 1917, 61

Powers of county commissioners.

SECTION 1. It shall be the duty of the county board of commissioners in each county, whenever they shall deem it necessary, or whenever complaint shall be made to them, to cause an inspection to be made of any premises, orchards or nurseries or trees, plants, vegetables, vines or fruits in their jurisdiction, and if found infested with infectious diseases, scales, insects or codling moths, or other pests injurious to fruits, plants, vegetables, trees or vines, or with their eggs or larvæ, they shall notify the owner or owners of the said premises or orchards or nurseries or trees, plants, vegetables, vines or fruits that the same are infested with said diseases, insects, or other pests, or any of them, or their eggs or larvæ, and they shall require said owner or owners to eradicate said insects or other pests

or their eggs or larvæ within a certain time to be specified in said notice. Said notices may be served upon the owner or owners, or either of them, by any commissioner or by any person deputed by the said commissioners for that purpose, or they may be served in the same manner as a summons in a civil action in a justice's court. Any and all such places or orchards or nurseries or trees, plants, vegetables, vines or fruits thus infested are hereby adjudged and declared to be a public nuisance, and whenever any such nuisance shall exist at any place within their jurisdiction, and the owner or owners thereof, after due notification of the aforesaid, shall refuse or neglect to abate the same within the time specified, it shall be the duty of the county board of commissioners to cause said nuisance to be at once abated by eradicating or destroying said diseases, insects, or other pests and their eggs and larvæ. The expense thereof shall be a county charge and shall be allowed and paid out of the general funds of the county. Any and all sums so paid shall be and become a lien on the property and premises from which said nuisance has been removed or abated in pursuance of this act and may be recovered by an action against such property and premises. A notice of such lien shall be filed and recorded in the office of the county recorder of the county in which the said property and premises are situated within thirty days after the right to liens has accrued. An action to foreclose such lien may be commenced at any time within one year after the filing and recording of said notice or lien, which action shall be brought in the proper court by the district attorney of the county in the name and for the benefit of the county making such payment or payments, and when the property is sold enough of the proceeds shall be paid into the county treasury of such county to satisfy the lien and costs, and the overplus, if any there be, shall be paid to the owner of the property if he be known, and if not, into the court for his use when ascertained. All sales under the provisions of this act shall be made in the same manner and upon the same notice as sales of real property under execution from the justice's court.

An Act to provide for the establishment of county agricultural farms and agricultural plots, and state aid thereto.

Approved March 24, 1917, 386

Demonstration farms authorized.

SECTION 1. For the purpose of demonstrating new or improved varieties of agricultural and horticultural crops; the handling and management of soils; the adaptability of certain soils to certain crops; improved cultural methods in the growing and harvesting of crops; improved methods in farm management and in farm accountancy, and for any other purpose incident to agricultural development or the reclamation of lands, the boards of county commissioners of the several counties are hereby authorized to establish county agricultural demonstration farms and county agricultural demonstration plots as hereinafter provided. A demonstration farm, under the provisions of this act, shall be a farm unit of not less than ten acres nor more than eighty acres. A demonstration plot shall not be less than one acre nor more than ten acres.

Conducted under agreement.

SEC. 2. Every such agricultural demonstration farm or plot under the provisions of this act shall be conducted by the owner, lessee or manager thereof under the supervision of, and in accordance with, the terms of a written project agreement entered into with the agricultural extension division, University of Nevada, and approved by the board of county commissioners of the county in which the same is located. Such agreement

shall include the keeping by such owner, lessee or manager, of accurate and systematic records and accounts in the form prescribed by said agricultural extension division, and which shall be subject to inspection, use and publication in furtherance of the purposes of this act.

Purposes of farms.

SEC. 3. The purpose of such demonstration farms shall be to demonstrate the results of improved systems of farm management and accountancy, as prescribed by said agricultural extension division and applied to such farm units. The purpose of such demonstration plots shall be to demonstrate the value and importance of new or improved varieties of crops, soil management, soil and climate adaptability to certain crops, etc.

How county avails itself.

SEC. 4. Any county desiring to avail itself of the provisions of this act shall, by resolution of its board of county commissioners, bind itself to pay to the owner, lessee or manager of such demonstration farm, or plot, as follows: For each demonstration farm, the sum of ten dollars per acre, but not exceeding the sum of one hundred dollars for any such demonstration farm unit; and for any demonstration plot, a minimum of twenty-five dollars, if the same be less than three acres, and ten dollars per acre if containing three acres or more, which said sum shall be paid annually, for each year such demonstration is to be continued, on the certification by said agricultural extension division that such demonstration has been conducted in accordance with agreement; *provided*, that no county shall be obligated under the provisions of this section, except in respect to demonstration farms and plots which have been approved by the board of county commissioners as provided in section two of this act. The authority to provide for such expenditure in the budget of the county and to disburse the same as aforesaid is hereby granted the board of county commissioners and the other officials of the several counties.

Farms to be legibly marked.

SEC. 5. Every such demonstration farm or plot conducted under the provisions of this act shall be legibly marked for the information of visitors, and shall at all proper hours be open to public inspection; *provided*, that visitors shall be held accountable for any injury done to growing crops or to the premises.

Reports of work.

SEC. 6. It shall be the duty of said agricultural extension division annually to prepare the information resulting from such demonstration in a form serviceable to aid and advance agricultural welfare of the state, and such number of copies thereof as may be deemed necessary, not exceeding ten thousand, shall be printed by the state printer for free distribution.

County to bear equal expense.

SEC. 7. Each county availing itself of the provisions of this act shall certify to the board of examiners the sum expended by such county in the subsidy of farm demonstration as heretofore provided, and said board of examiners shall approve all such claims to the extent of one-half the amount of money so expended by any county, and the controller shall draw his warrants in favor of the said county for such proportionate amount and the state treasurer shall pay the same.

An Act to provide for cooperative agricultural and home economics extension work in the several counties in accordance with the Smith-Lever act of Congress, approved May 8, 1914; providing for the organization of county farm bureaus; for county and state cooperation in support of such work; making an annual appropriation therefor, levying a tax and for other purposes.

Approved April 1, 1919, 387

Purpose of act.

SECTION 1. That in order to aid in diffusing among the people of the State of Nevada useful and practical information on subjects relating to agriculture, home economics and rural welfare and to encourage the application of the same, there may be inaugurated in each of the several counties of the state extension work which shall be carried on in cooperation with the agricultural extension division, University of Nevada, established under the provisions of the Smith-Lever act of Congress, approved May 8, 1914, in such manner as may be mutually agreed upon by the board of directors of the county farm bureau provided for in section two of this act, and the director of agricultural extension.

County farm bureaus authorized.

SEC. 2. That for the purpose of carrying out the provisions of this act there may be organized in each county within the State of Nevada a corporation to be known as the county farm bureau, in the following manner: Whenever one hundred and fifty or more adult residents in any county, at least two-thirds of whom shall be certified as engaged in agriculture as owners, lessees, operators or managers of farm property or live stock, or as farm housewives, shall have effected temporary organization for doing extension work in agriculture and home economics, and shall have adopted articles of incorporation acceptable to the director of agricultural extension, they may make application to the secretary of state for incorporation under the laws of Nevada as a corporation not for profit, and when such corporation shall have been effected it shall be known as the.....county farm bureau and shall be recognized as the official body within said county for carrying on extension work in agriculture and home economics in cooperation with said agricultural extension division; *provided*, that in any county wherein the total number of farms is less than one hundred as certified by the county assessor, it shall be sufficient for the purposes of this act if the number of persons required to be certified as engaged in agriculture as aforesaid shall be ten per cent greater than such total number of farms; *provided further*, that not more than one such bureau shall be incorporated in any county.

Financial budget for work—County tax.

SEC. 3. The board of directors of the county farm bureau and the director of agricultural extension shall prepare an annual financial budget covering the county's share of the cost of carrying on the cooperative extension work in agriculture and home economics provided for in this act, together with the share of each of all other cooperating agencies; *provided*, that the county's share shall not exceed a sum equal to the proceeds of one cent of the county tax rate, which, if adopted by a majority vote of said bureau at a regularly called meeting, shall be filed with the board of county commissioners of such county, which said board shall include the county's share thereof in the budget of county expenditures for such year and shall annually, at the time of levying taxes for county purposes, levy a county tax, at a rate not exceeding one cent on each hundred dollars of

taxable property, to provide such fund. The proceeds of such tax rate shall be placed in the county treasury in a fund to be known as the farm bureau fund and shall be subject to disbursement in accordance with such budget on certificates of the president and secretary of the county farm bureau approved by the board of county commissioners and paid in like manner as other county claims are paid.

State appropriation.

SEC. 4. That for the purposes of state cooperation in the support of county agricultural and home economics extension work there is hereby annually appropriated, out of any money in the state treasury not otherwise appropriated, a sum equal to the total appropriations of the several counties for the support of county agricultural and home economics extension work as provided in section three of this act, but shall not be greater in any year than the proceeds of one cent of the state tax rate, and which said sum, or so much thereof as may be necessary, shall be subject to disbursement in accordance with the state's share of the cost of cooperative agricultural and home economics extension work in each of the several counties as stated in the annual financial budget mentioned in section three of this act, and not exceeding in any county the amount of county funds so appropriated, on certificates of the president and secretary of such farm bureau and the board of regents, University of Nevada, approved by the state board of examiners, when the state controller shall draw his warrant and the state treasurer pay the same; *provided*, that a certified copy of each such cooperative county budget shall be filed with the board of regents, the state board of examiners and the state controller within ten days after date of filing with the board of county commissioners.

Revised budget, when.

SEC. 5. Necessary modification of any annual budget provided in section three of this act, involving county or state funds, due to leave of absence without pay, resignation, dismissal or employment of any cooperative agent or appointee, or to other causes, not involving increase in the total of expenditures provided from state or county funds, and consistent with the purposes of this act, may be made by filing with the board of county commissioners and the county auditor, when affecting county funds, and with the state board of examiners and the state controller when affecting state funds, a revised budget approved and certified to by the executive committee of the county farm bureau and the director of agricultural extension.

Bureaus to report.

SEC. 6. It shall be the duty of each said county farm bureau annually on or before January 1, to present its plans for extension work for the ensuing year and to render to both the agricultural extension division and the board of county commissioners a full and detailed report of its extension activities for the preceding fiscal year, including a detailed report of its receipts and expenditures from all sources, on such forms as may be prescribed by the agricultural extension division; *provided*, that for the year 1919 any farm bureau duly organized as provided in section two of this act may submit its cooperative budget for such year to the board of county commissioners not later than the third Monday in March.

Act not to affect certain appropriation.

SEC. 7. Nothing in this act shall be construed as affecting any appropriation made in support of agricultural extension as a part of the public service division of the University of Nevada, in respect to the cost of administration, employment of state leaders and specialists and other

purposes incident to state-wide and county supervision and cooperation in extension work.

An Act for the advancement of agriculture, horticulture, the livestock industry and home economics, and for the dissemination of knowledge and information in relation thereto, in southern Nevada; creating the Southern Nevada agricultural board and prescribing its duties; providing for cooperative agricultural extension work in southern Nevada by agreement with the agricultural extension division, University of Nevada; making an appropriation therefor; repealing "An act to establish an agricultural experiment farm in the southern part of this state and making an appropriation therefor," approved March 2, 1905, and all acts amendatory and supplemental thereto, and for other purposes.

Approved March 21, 1917, 242

Board created; how composed.

SECTION 1. For the advancement of agriculture, horticulture, the livestock industry and home economics, and for the dissemination of knowledge and information in relation thereto, in Clark County, and that portion of Nye County lying south of the 37th degree parallel of latitude, in southern Nevada, the governor is hereby authorized to appoint three persons, resident therein, as members of the Southern Nevada agricultural board, which is hereby created. The terms of office of the members of said board shall be at the pleasure of the governor, and they shall serve without compensation other than for actual traveling and living expenses when attending meetings thereof. Said board shall organize by electing one of their number as chairman and may appoint a secretary who shall serve without compensation.

Duties of said board.

SEC. 2. It shall be the duty of said board, on or before the 15th day of June of each year, to enter into a written agreement with the agricultural extension division, University of Nevada, providing for cooperative agricultural extension work in southern Nevada, as defined under the Smith-Lever act of Congress, for the ensuing federal fiscal year beginning July 1 next thereafter. Said agreement shall outline, in the form of definite projects, the work agreed to be undertaken and conducted during such fiscal year in pursuance of this act, and shall include a detailed budget of the expenditures authorized under each such project, a certified copy of which, and of any subsequent revision thereof, shall be filed with the state controller. No expenditures shall be contracted or paid except in pursuance of such budget.

Appropriation.

SEC. 3. For the purpose of carrying out the provisions of this act the sum of twenty-five hundred dollars annually, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, and which shall be disbursed in pursuance of said budget on claims certified to by the chairman of said board and the director of agricultural extension, in the same manner as other claims against the state are paid.

Abolishing Logan experiment farm.

SEC. 4. "An act to establish an agricultural experiment farm in the southern part of this state, and making an appropriation therefor," approved March 2, 1905, and all acts amendatory thereof or supplemental thereto, are hereby repealed.

Governor and secretary of state to act.

SEC. 5. The governor and secretary of state are hereby authorized and directed to make necessary conveyances of all the real and all other property of the above-mentioned agricultural experiment farm to the county of Clark, the proceeds from the sale or lease of the same to be used in agricultural extension work in connection with said Southern Nevada agricultural board.

An Act creating the Northeastern Nevada agricultural board; defining its purpose, and prescribing its duties; providing for cooperation with the agricultural extension division, University of Nevada, and other matters relating thereto, and making an appropriation therefor.

Approved March 24, 1917, 395

Board created.

SECTION 1. For the advancement of agriculture, horticulture, the livestock industry and the reclamation of lands, and for the dissemination of knowledge and information in relation thereto, in northeastern Nevada, the governor is hereby authorized to appoint three persons, resident and engaged in farming in Elko County, as members of the Northeastern Nevada agricultural board, which is hereby created. The terms of office of said board shall be at the pleasure of the governor, and they shall serve without compensation other than for actual traveling and living expenses when attending meetings thereof. Said board shall organize by electing one of their number as chairman and may appoint a secretary who shall serve without salary.

Agent appointed.

SEC. 2. Said board, cooperatively with the agricultural extension division, University of Nevada, shall forthwith appoint a county agricultural agent who shall be a practical dry-farm expert and be otherwise qualified to perform the duties required of a competent agricultural leader. Said agent shall be under the direction of said board; *provided*, that his duties shall be annually defined in a written project agreement entered into by said board with the director of agricultural extension, and which shall include a detailed budget of the proposed expenditures for such year.

Salary.

SEC. 3. The said dry-farm expert shall receive a salary of eighteen hundred (\$1,800) dollars per year, to be paid as other state salaries are paid. He shall also be entitled to actual traveling expenses, subject to audit as in the case of other state claims by the state board of examiners after approval by the Nevada dry-farm board.

Appropriation.

SEC. 4. The sum of twenty-five hundred (\$2,500) dollars is hereby appropriated, from any funds in the state treasury not otherwise appropriated, for the purpose of paying traveling and other expenses which may be incurred in carrying out the provisions of this act.

Report to be printed.

SEC. 5. The said dry-farm expert shall make and publish annual reports for each calendar year showing his activities during the year. Such reports may, in the discretion of the state board of examiners, be printed at the state printing office under the general provisions of an act entitled "An act to designate and authorize the work to be done in the state printing office," approved March 5, 1909.

APIARIES

477–81. Repealed by implication, by Stats. 1913, 449.

Stats. 1913, 449, repealed, Stats. 1917, 201.

See "An act to create the office of state inspector of apiaries," Stats. 1917, 198, post.

ATTORNEYS

511. For an attorney to publish and advertise a pamphlet the purpose of which is to attract nonresidents to the state to apply to its courts for divorce, through his agency as an attorney, that he may profit financially thereby is "misconduct," within this section (Cutting, sec. 2625). In *Re Schnitzer*, 33 Nev. 581, 591 (112 P. 848, 33 L. R. A. (N.S.) 941).

AUTHENTICATION OF RECORDS

526. Cited, *Eureka Bank Cases*, 35 Nev. 111 (126 P. 655; 129 P. 308).

BANKRUPTCY

559. Debts not affected by discharge.

SEC. 17. A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the state, county, district or municipality in which he resides; (2) are liabilities for obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice of actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity. *As amended, 39 Stat. L. 999.*

BANKS AND BANKING

619. Business which may engage in.

SEC. 4. A banking corporation organized under the provisions of this act shall be permitted to receive money on deposit, to buy and sell exchange, gold, silver, coin, bullion, uncurrent money, and bonds; to loan money on chattel and personal security, or on real estate secured by mortgage; to own a suitable building, furniture, and fixtures for the transaction of its business, the value of which shall not exceed forty per cent of the capital and surplus of said bank, fully paid; *provided*, that nothing in this section shall prohibit such bank from holding or disposing of such real estate as it may acquire through the collection of debts due it; *and provided further*, that all banking institutions and trust companies now organized as corporations doing business in this state are hereby permitted to continue said business as at present incorporated, but in all other respects their business, and the manner of conducting the same, and the operation of said bank or trust company, shall be carried on subject to the provisions of this act, and in accordance therewith; *and provided further*, that no bank or trust company, except those that have complied with the provisions of this act, shall engage in any other business than is authorized by this act. *As amended, Stats. 1915, 339.*

621. Regulation of savings bank.

SEC. 6. Any banking corporation designating its business as that of a savings bank shall have power to carry on a savings-bank business as prescribed and limited in this act. Any savings bank may receive deposits, and such deposits shall be repaid to the depositors or their lawful representatives at such time and with such interest and under such regulations, assented to by the depositors, as shall be prescribed by said bank and approved by the state banking board, which regulations shall be printed and conspicuously posted in some place accessible and visible to all persons in the business office of said bank. The funds of any savings bank, except the reserve provided for in this act, shall be invested in bonds of the United States, or of any state of the United States, or in the public debt or bonds of any city, county, township, irrigation districts, village or school district of any state in the United States which shall have been lawfully issued; or may be loaned on negotiable paper secured by any of the above-mentioned classes of security; or upon notes or bonds secured by mortgage lien upon unincumbered real estate; *provided*, that second-mortgage loans may be made upon improved farm lands, but no loans shall be made upon such lands or other real estate which, including the aggregate amount of all incumbrances, shall exceed fifty per cent of the cash value thereof; or upon notes secured by collateral security of known marketable value; or shall be deposited in good solvent banks or held as cash; *provided, also*, that chattel mortgages shall not be deemed collateral security and savings banks are prohibited from investing their funds in them except with the written consent of the state bank examiner. *As amended, Stats. 1919, 120.*

628. Restrictions on investing capital.

SEC. 13. No bank shall employ its moneys, directly or indirectly, in trade or commerce by buying or selling goods, chattel wares, or merchandise, and shall not invest any of its funds in the stock of any bank or trust company or corporation, nor make any loans or discounts upon the security or the shares of its own capital stock, nor be the purchaser or holder of any

such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall, within twelve months from the time of its purchase, be sold or disposed of at public or private sale; after the expiration of twelve months any such stock shall not be considered as part of the assets of any bank or trust company; *provided, however*, that nothing in this section nor in this act shall be deemed to prohibit banks from subscribing to, purchasing, or becoming the owners of stock in federal reserve banks as established by act of Congress of the United States, approved December 23, 1913, or any branch thereof; and all banks doing business under and by virtue of the laws of this state are hereby expressly permitted and authorized to subscribe for and purchase stock of federal reserve banks and become members of any reserve bank; *provided further*, that any bank may sell or become the owner of any property which may come into its possession as collateral security for any debt or obligation due it, according to the terms of any contract depositing such collateral security, and if there be no such contract, then collateral security may be sold in the manner provided by law. *As amended, Stats. 1915, §2.*

630. Restriction on amount to be borrowed.

SEC. 15. The total liability to any bank of any person, company, corporation, or firm for money borrowed, shall not at any time exceed twenty-five per cent of the capital stock and surplus of such bank, actually paid in, except by and with the written consent of the state bank examiner, but the discount of bills of exchange drawn in good faith against actual existing values, as collateral security, and a discount or purchase of commercial or business paper, actually owned by the persons, shall not be considered as money borrowed. *As amended, Stats. 1915, §39.*

631. This section having remodeled and carried over most of the provisions of the general banking act of March 24, 1909 (Stats. 1909, 257), and having omitted the provision of section 22 making it a felony to publish any false statement of the amount of the assets and liabilities of a banking corporation, and the later act being a general and comprehensive one, working over the provisions of the earlier act, the provisions making it a felony to publish such a statement, is repealed and no longer in force. *Eureka Bank Cases, 35 Nev. 85, 143 (126 P. 655; 129 P. 308).*

636. Banks to make reports.

SEC. 21. Every bank shall make at least four reports each year, and oftener if called upon, to the bank examiner, according to the forms which may be prescribed by him verified by the oath or affirmation of its president, vice-president, or cashier, and attested by the signatures of at least two of the directors. Each report shall exhibit in detail, and under the appropriate heads, the resources and liabilities of such bank at the close of business on any past day specified by the bank examiner, and shall be transmitted to him within ten days after the receipt of a request or requisition therefor by him, and shall be published in condensed form according to his requirements, within ten days after same is made, in a newspaper published in the county in which such bank is established, for one insertion at the expense of the bank, and such proof of publication shall be furnished within five days after the date of publication, as may be required by the bank examiner. The bank examiner shall also have power to call for special reports, which need not be published, from any bank, whenever, in his judgment, the same is necessary, in order to gain a full and complete knowledge of its condition; *provided*, the reports authorized and required by this section, to be called for by the bank examiner, shall relate to a date prior to the date of such call to be specified therein; *and provided further*,

the prior date specified by the bank examiner for reports, other than special reports, shall be the day designated by the comptroller of the currency of the United States for reports of national banking associations. *As amended, Stats. 1919, 394.*

656. Real estate bank may purchase, hold, or convey.

SEC. 41. A bank may purchase, hold, or convey real estate for the following purposes: first, such as shall be necessary for the convenient transaction of its business, including its furniture and fixtures, but the real estate shall not exceed forty per cent of its capital and surplus; second, such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business; third, such as it shall purchase at sale under judgment, decree, or mortgage foreclosure under securities held by it, but shall not bid at any such sale a larger amount than is necessary to satisfy its debts and costs. Real estate shall be conveyed by an individual banker as in other cases, or under the corporate seal of the bank, and the hand of either its president, vice-president, or cashier, approved by a resolution of its directors. No real estate acquired in the cases contemplated in the second and third subsections above shall be held for a longer time than ten years. It must be sold at a private or public sale within thirty days thereafter. *As amended, Stats. 1915, 340.*

664. State board supersedes state banking board.

SEC. 49. The state board of finance shall be the Nevada state banking board. The state board of finance, sitting as the Nevada state banking board, shall have, in connection with the state bank examiner, supervision and control of banks and banking in this state, and no persons, firms, associations, or corporations shall be permitted to engage in the banking business in this state, save in compliance with this act. The minutes, records and all proceedings of the Nevada state banking board shall be in the name of the state board of finance. *As amended, Stats. 1915, 340; 1919, 285.*

665. Qualifications of examiner—Deputy—Seal.

SEC. 50. The governor shall appoint a bank examiner who shall be a person who has had practical banking experience; he shall receive a salary of four thousand dollars per year, payable in equal monthly installments out of the general fund of the state; he may be removed from office at any time by a majority vote of the whole banking board. During his term of office the examiner shall not be permitted to examine the affairs of any bank in which he has an interest nor in which he is or, within one year next preceding his appointment, was an officer or employee. Until further action by the banking board, the present bank examiner shall be continued in office with all the powers and duties thereby conferred and imposed. In every case where the examiner shall be called upon to settle up the affairs of a bank, in accordance with the provisions of this act, he may, if the circumstances in his judgment warrant such action, appoint a deputy bank examiner to aid him in carrying out the provisions of this act; the examiner shall fix the salary of such deputy, which shall not exceed the sum of two hundred dollars per month, payable monthly out of the general fund of the state. Such deputy shall perform such duties as the examiner shall direct, but no deputy shall be appointed except in connection with the liquidation of the business of a bank, nor shall his employment continue longer than may be required for that purpose, and he shall be subject to removal at any time at the pleasure of the examiner or of the state banking board. The bank examiner shall occupy the offices of the state banking board and shall act as secretary of the board. The seal of the state banking board shall be as heretofore prescribed, and all licenses and orders

issued by the board and by its authority shall be attested by the seal of the state banking board and by the signature of the bank examiner. *As amended, Stats. 1915, 190.*

670. Security from assistants.

SEC. 55. The examiner shall require from the clerks and assistants, including a deputy examiner, if any, employed in the settling up of the affairs of any bank, in accordance with this act, such security for the faithful performance of their duties as he may deem proper. *As amended, Stats. 1915, 191.*

681. Official oath.

SEC. 66. The deputy bank examiners, if any, shall, before entering upon the discharge of their duties, take and subscribe the constitutional oath of office. *As amended, Stats. 1915, 191.*

692. The banking act (Stats. 1911, 291) being a general and comprehensive act, working over and covering most of the features of the general banking act of March 24, 1909 (Stats. 1909, 251), and evidently intended as a substitute for it, repeals the provisions of that act by implication, except as specifically continued in force. *Eureka Bank Cases, 35 Nev. 85, 145, 146 (126 P. 655; 129 P. 308).*

The court is without jurisdiction to hold for trial and convict the accused under the provision of an act which has been repealed, and when held for an act which is no longer criminal they are entitled to be discharged upon habeas corpus. *Id.*

693. Cited, *State ex rel. Norcross v. Eggers, 35 Nev. 258 (128 P. 986).*

An Act relative to payment of deposits in trust.

Approved March 27, 1919, 240

Trust funds, how paid.

SECTION 1. Whenever any deposit shall be made in any bank, savings bank, or trust company doing business within this state, by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom said deposit was made.

An Act relative to payment of deposits in two names.

Approved March 27, 1919, 240

Bank may pay either party.

SECTION 1. When a deposit has been made, or shall hereafter be made, in any bank or trust company transacting business in this state in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons, whether the other be living or not; and the receipt or acquittance of the persons so paid shall be a valid and sufficient release and discharge to the bank for any payment so made.

An Act fixing the liability of a bank to its depositors for payment of forged or raised checks.

Approved March 28, 1919, 342

Liability.

SECTION 1. No bank which has paid and charged to the account of a depositor any money on a forged or raised check issued in the name of said depositor shall be liable to said depositor for the amount paid thereon

unless either (1) within ninety days after notice to said depositor that the vouchers representing payments charged to the account of said depositor for the period during which such payment was made are ready for delivery, or (2) in case no such notice has been given, within ninety days after the return to said depositor of the voucher representing such payment, said depositor shall notify the bank that the check so paid is forged or raised.

Notice by mail.

SEC. 2. The notice referred to in the preceding section may be given by mail to said depositor at his last known address, with postage prepaid.

An Act authorizing any bank or trust company incorporated under the laws of this state to become a member of a federal reserve bank; vesting in such bank or trust company all powers conferred upon member banks by the federal reserve act, subject to the restrictions and limitations imposed by or under that act; providing as to reserve requirements and examinations.

Approved March 27, 1919, 241

Words defined.

SECTION 1. The words "Federal Reserve Act," as herein used, shall be held to mean and to include the act of Congress of the United States approved December 23, 1913, as heretofore and hereafter amended. The words "Federal Reserve Board" shall be held to mean the federal reserve board created and described in the federal reserve act. The words "Federal Reserve Bank" shall be held to mean the federal reserve banks created and organized under authority of the federal reserve act. The words "Member Bank" shall be held to mean any national bank, state bank, or banking and trust company which has become or which becomes a member of one of the federal reserve banks created by the federal reserve act.

Bank may become member.

SEC. 2. That any bank or trust company incorporated under the laws of this state shall have the power to subscribe to the capital stock and become a member of a federal reserve bank.

Bank vested with powers of member banks.

SEC. 3. Any bank or trust company incorporated under the laws of this state which is, or which becomes, a member of a federal reserve bank is, by this act, vested with all powers conferred upon member banks of the federal reserve banks by the terms of the federal reserve act as fully and completely as if such powers were specifically enumerated and described herein, and all such powers shall be exercised subject to all restrictions and limitations imposed by the federal reserve act, or by regulations of the federal reserve board made pursuant thereto. The right, however, is expressly reserved to revoke or to amend the powers herein conferred.

What considered compliance.

SEC. 4. A compliance on the part of any such bank or trust company with the reserve requirements of the federal reserve act shall be held to be a full compliance with those provisions of the laws of this state which require banks or trust companies to maintain cash balances in their vaults or with other banks, and no such bank or trust company shall be required to carry or maintain reserve other than such as is required under the terms of the federal reserve act.

Subject to state banking laws.

SEC. 5. Any such bank or trust company shall continue to be subject to the supervision and examinations required by the laws of this state, except

that the federal reserve board shall have the right, if it deems necessary, to make examinations; and the authorities of this state having supervision over such bank or trust company may disclose to the federal reserve board, or to examiners duly appointed by it, all information in reference to the affairs of any bank or trust company which has become, or desires to become, a member of a federal reserve bank.

An Act authorizing banks to forward checks and other negotiable instruments for collection directly to the banks upon which the checks or other negotiable instruments are drawn or at which they are made payable.

Approved March 27, 1919, 242

What deemed due diligence.

SECTION 1. Any bank, banker or trust company, hereinafter called bank, organized under the laws of, or doing business in, this state, receiving for collection or deposit any check, note or other negotiable instrument drawn upon or payable at any other bank located in another city or town, whether within or without this state, may forward such instrument for collection directly to the bank on which it is drawn or at which it is made payable and such method of forwarding direct to the payor shall be deemed due diligence, and the failure of such payor bank, because of its insolvency or other default, to account for the proceeds thereof, shall not render the forwarding bank liable therefor; *provided, however*, such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument.

BAILMENTS

541. Under this section, in an action by the shipper for conversion of shipment of lumber which had been sold to pay freight and demurrage, the burden was on the carrier to show that the sale was regularly conducted. *Horton v. Tonopah and Goldfield R. Co.*, 225 F. 406, 408.

BARBER-SHOPS

An Act relating to barber-shops, defining the same, providing regulations in connection therewith, protecting the health of barbers and their patrons, and fixing a penalty for the violation thereof.

Approved March 27, 1917, 422

Barber-shop defined.

SECTION 1. Any place where a person is shaved, his hair cut, or his beard trimmed, for hire or reward, shall be construed as being a barber-shop.

Must close, when.

SEC. 2. It shall be unlawful in any town or city of this state having a population of more than five hundred people, for any person, or persons, company or corporation, to keep open, or permit to be kept open, any barber-shop or public place for the purpose of carrying on or plying the barber trade or business, or to conduct such business on the first day of

each week, commonly called Sunday, that is to say, between the hours of twelve (12) o'clock midnight of Saturday of any week, and twelve (12) o'clock midnight of the following day, Sunday. *As amended, Stats. 1919, 15.*

Must use sanitary tools.

SEC. 3. Any person who shaves another person afflicted with syphilis, eczema, blood poison, or any skin disease, who does not, before he again uses his tools, towels, or water, subject them to such disinfection as may remove any virus, scale, or filth that may be on such tools, towels, or instrument, shall be guilty of a violation of this act.

Insanitary shop prohibited.

SEC. 4. It shall be unlawful for any person who conducts a barber-shop to permit to remain therein any virus, scale or filth, or to conduct a barber-shop that is insanitary and dangerous to the health of its patrons.

Penalties for violation.

SEC. 5. Every proprietor, owner, manager, lessee, or other person in charge of any barber-shop in this state who shall fail to comply with this act, whether through the acts of himself, his agent or employees, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars, or shall be imprisoned for not more than three (3) months, or both fine and imprisonment, and every day that any barber-shop shall be conducted in violation of any of the provisions of this act shall constitute a separate offense.

BONDS AND UNDERTAKINGS

695. Under similar act (Stats. 1887, 86, as amended by Stats. 1903, 63) it was held that an appeal bond executed by a surety company and duly approved is valid, and takes the place of a bond in accordance with Comp. Laws, 3436, 3443, requiring an undertaking on appeal to be furnished by two sureties. *Botsford v. Van Riper*, 32 Nev. 214, 226(106 P. 440).

The above-mentioned act is a general law, and does not repeal the provisions of the civil practice act (Comp. Laws, 3436, 3443) for undertakings on appeal, but only provides an additional method of furnishing such undertakings at the option of appellant. *Id.*

695-701. See *Konig v. N.-C.-O. Ry.*, 36 Nev. 196, under section 698.

697. Surety company to obtain certificate.

SEC. 4. Any surety company qualified by this act to transact business in this state may, at any time, apply to the secretary of state, and, upon the payment of a fee of five dollars therefor, obtain a certificate which shall state the name of such company, the state under which it is incorporated or exists, and that such company has fully qualified under the provisions hereof to assume risks and become surety on all bonds and undertakings mentioned in section 1 hereof, stating also the date such company qualified as aforesaid; *provided*, that such certificates shall expire on the first day of January of the year succeeding the date of issuance. *As amended, Stats. 1915, 81.*

698. Certificate to be evidence.

SEC. 5. The certificate or any duplicate certificate issued by the secretary of state in accordance with the provisions of this act shall be prima facie evidence in all the courts of this state of all matters herein stated; *provided*, such certificate shall not have expired. Any printed copy of a

circular issued by the treasury department of the United States known as form No. 356, stating the amount of the capital and surplus of any such surety company, and not more than six months old as appears from the date of issuance thereof, shall be prima facie evidence of the amount of such capital and surplus and of the amount to which such company is entitled to be received as sole surety on any bond in this state, and shall, if accompanied with the certificate of the secretary of state herein mentioned, be a complete justification for any amount not exceeding ten per centum of such capital and surplus, whenever any such company shall be required to justify on any bond or undertaking; *provided*, that the party requiring such justification may produce competent evidence to show that such surety company is not worth such sum over and above all its just debts and liabilities exclusive of property exempt from execution; *provided further*, that bonds and undertakings on which such company may have become surety shall not be considered as debts or liabilities unless the obligation thereon shall have accrued and the obligee shall have demanded payment from such company. *As amended, Stats. 1915, 81.*

Under this section it was held, that an instrument excepting to the sufficiency of the surety on an undertaking on appeal, and asking that such surety appear before the judge and justify as required by Rev. Laws, 3443, although probably sufficient where personal sureties are given, was not a sufficient exception where undertaking was executed by a surety company, this section having provided an entirely different method for the justification of such companies. *Konig v. N.-C.-O. Ry.*, 36 Nev. 182, 192-198 (135 P. 141).

699. Items of cash paid a surety company by appellant as premiums on the appeal and stay bonds are proper elements of costs to be collected by appellant upon reversal in view of this section. *Richards v. Vermilyea*, 42 Nev. 294, 301 (180 P. 122).

701. Surety bond illegal, when.

SEC. 8. No court or officer having authority so to do shall approve any surety bond or undertaking given by any surety company as surety thereon, unless the person offering the same, or some one in his behalf, shall exhibit the certificate of the secretary of state showing that such company has duly qualified under this act to become such surety, which certificate shall have been issued during the current calendar year. *As amended, Stats. 1915, 390.*

BOUNTIES

718. Bounties for certain animals.

SECTION 1. If any person shall take or kill within this state any of the following noxious animals, he shall be entitled to receive, out of the treasury of the county within which such animals shall have been taken, the following bounties, to wit: For every lynx or wildcat, two dollars, and for every mountain lion, five dollars; all of which bounties shall be subject to the provisions of this act. *As amended, Stats. 1913, 18; 1917, 72.*

An Act authorizing the expenditure of money by the state under certain conditions for the purpose of aiding counties in sinking artesian wells.

Approved March 13, 1915, 127

Bounties, how paid.

SECTION 1. When any county of the state shall hereafter have expended in any year for the purposes set forth in section one of an act entitled "An act authorizing the board of county commissioners of the various counties in the state to acquire real estate, and to sink, or cause to be sunk thereon,

artesian wells, and making the expense thereof a legal charge against the county," approved February 20, 1913, a sum amounting to four thousand dollars or more, upon the filing in the office of the state controller of a certificate to that effect made by the county auditor, stating the actual amount so expended, which certificate shall also be verified by the oath of a majority of the commissioners of such county, to the effect that such expenditure has been properly made for said purposes, the said controller shall draw a warrant upon the state treasury for a sum equivalent to that certified by the county auditor, not, however, in any instance to exceed the sum of five thousand dollars; and as often as any county of the state shall, from year to year, make a similar expenditure, upon a like certificate from the county auditor, said state controller is authorized, empowered, and directed to draw a like warrant upon the state treasury.

Duties of controller and treasurer.

SEC. 2. Upon the presentation of such warrant to the state treasurer, he is hereby authorized, empowered, and directed to pay out of any unappropriated money of the state and to the treasurer of the county from which any such auditor's certificate emanated the sum specified in the warrant of the state controller.

Special county fund.

SEC. 3. Such sum or sums, when received by such county, shall be by the board of commissioners set apart in a special fund, and shall be used for the purposes mentioned in the aforesaid act, and for no other.

CEMETERIES

An Act requiring the owners of public cemeteries to keep a plat of the same and to keep the same in an orderly condition, and other matters connected therewith.

Approved March 22, 1913, 251

Plat must be kept.

SECTION 1. Any person, association, corporation or fraternal or other society, owning any public cemetery, shall keep a plat of the same showing the avenues and paths therein, together with the lots for burial purposes.

What plat shall show.

SEC. 2. Said plat shall show the location of all bodies interred in said cemetery, together with the name of the owner of such lot and the name of each person interred.

Must be neatly kept.

SEC. 3. It shall be the duty of every owner of a cemetery to keep the same in an orderly condition, and authority is hereby conferred on the boards of county commissioners of each county in the state to make such rules as will carry out the intent of this section.

Penalties.

SEC. 4. Any person who shall violate any of the provisions of this act, or who, after being notified by the board of county commissioners, shall fail or refuse to place the cemetery under his charge or ownership in an

orderly condition, shall be guilty of a misdemeanor and punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail for not less than twenty-five nor more than one hundred days.

Applies to certain counties only.

SEC. 5. This act shall apply only to any county in this state wherein from 680 to 690 votes were cast for representative in Congress at the last general election.

CHILDREN

728. Under this section, a court could not commit to the state orphans' home a dependent or neglected child who was not an orphan, since an "orphans' home" is an institution or a home for the care of destitute orphans, and not a "reformatory" or institution in which young offenders are confined and instructed, with a view to their reformation. *McKinnon v. Harwood*, 35 Nev. 494, 499, 501 (130 P. 465).

729. See *McKinnon v. Harwood*, 35 Nev. 494, under section 728.

733. Probation officers—Duties—Appointment of.

SEC. 6. The district courts in this state shall have authority to appoint any number of discreet persons of good moral character to serve as probation officers during the pleasure of the court; said probation officers shall receive no compensation from the county treasury except as herein provided. It shall be the duty of the clerk of the court, if practicable, to notify the said probation officer when any child is to be brought before the court; it shall be the duty of such probation officer to make investigation of such case; to be present in the court to represent the interests of the child when the case is heard; to furnish such court such information and assistance as the court or judge may require, and to take charge of any child before and after the trial as may be directed by the court. The number of probation officers to receive compensation from the county, named and designated by the district court, shall be as follows:

The judge of the district court in and for each county, or city and county, of the state, or the judges where there are more than one judge of the said court, may appoint probation officers, in the number and under the conditions as in this act provided, whenever such appointments shall be deemed necessary to care for the dependent and delinquent children of the county; *provided*, such probation officers can be removed from office at any time by the said district judge, or judges. The salary of said probation officers shall be as follows:

In counties having over fifteen thousand population, there may be one probation officer receiving a salary. An assistant probation officer may be appointed, in the discretion of the court, upon the request of the probation officer. The salary of the probation officer shall be fixed by the court appointing him, in any sum not to exceed one hundred and fifty dollars per month; and the salary of the assistant probation officer, where one is appointed, shall likewise be fixed by the court appointing him in any sum not to exceed seventy-five dollars per month. The expenses of such probation officers for probation work shall not exceed seven hundred and fifty dollars per year.

In counties having less than fifteen thousand population it shall be within

the discretion of the district judge, or judges, of each of said counties to determine as to the necessity of appointing a probation officer; *provided*, that in counties having eight thousand population and under fifteen thousand there shall be no more than one probation officer receiving a salary, and such salary shall be fixed by the court appointing him, in any sum not to exceed one hundred and twenty-five dollars per month; *provided further*, that in counties of five thousand and under eight thousand there shall be no more than one probation officer receiving a salary, and such salary shall be fixed by the court appointing him, in any sum not to exceed one hundred dollars per month; *and provided further*, that in counties of under five thousand there shall be no more than one probation officer receiving a salary, and such salary shall be fixed by the court appointing him, in any sum not to exceed seventy-five dollars per month.

All probation officers whose expenses are not herein provided shall be allowed such necessary incidental expenses as may be authorized by the judge, or judges, of the district court of said county; *provided*, that the said probation officers can be appointed for any portion or part of a year as the said district judge or judges may determine, and can be paid for the time and periods said probation officer serves under such appointment. The salary and expenses of the probation officer shall be paid out of the county funds in the county treasury in monthly installments, in the same manner as other claims against the county.

Any district judge, or judges, appointing such probation officer to receive a salary or other compensation from the county provided for under this act, shall transmit such appointment to the district superintendent of schools of the district of which the county in which said appointment is made is a part, the state superintendent of public instruction, and the governor of this state, who shall constitute a board to investigate the competency of such person so appointed to act as probation officer, and it shall be the duty of a majority of said board to approve or disapprove of such appointee, within thirty days after the submission thereof by the said district court, and a failure to act thereon within such time shall constitute an approval of such appointment. If a majority of such board are of the opinion that such appointee does not possess the qualifications for a probation officer, they shall notify the court of their conclusions within thirty days of such appointment to the respective members thereof, whereupon it shall be the duty of the district judge, or judges, to withdraw such appointment and appoint some one who shall receive the approval of said board.

Probation officers receiving a salary or other compensation from the county, provided for by this act, are hereby vested with all the power and authority of police or sheriffs to make arrests and perform any other duties ordinarily required by policemen and sheriffs which may be incident to their office or necessary or convenient to the performance of their duties; *provided*, that other probation officers may be vested with like power and authority upon a written certificate from the district judge, or judges, that they are persons of discretion and good character, and that it is the desire of the court to vest them with all the power and authority conferred by law upon probation officers receiving compensation from the county.

The appointment of probation officers and the approval thereof as to the qualifications of such officers by the board herein designated, shall be filed in the office of the clerk of the court. Probation officers shall take an oath such as may be required of other county officers to perform their duties, and file in the office of the clerk of the district court. *As amended, Stats. 1917, 67.*

734. Probation committee—Oath—Duties.

SEC. 7. The judge or judges of the district court in and for each county or city and county of the state, and in counties where there is more than one judge of the said court, shall, by an order entered in the minutes of the court, appoint five discreet citizens of good moral character and of either sex, to be known as "Probation Committee," and shall fill all vacancies occurring in such committee. The clerk of said court shall immediately notify each person appointed upon said committee, and thereupon said person shall appear before the judge of the district court to whom has been assigned all proceedings under this act, and qualify by taking an oath, which shall be entered in said juvenile court record, to faithfully perform the duties of a member of said probation committee.

The members of such probation committee shall hold office for two years, and until their successors are appointed and qualified. When any vacancy occurs in any probation committee otherwise than by expiration of the term of office of any member thereof, his successor shall be appointed to hold office for the unexpired term.

Members of the probation committee shall serve without compensation, and shall choose from their members a chairman and secretary.

The district court, or any judge thereof, may at any time require of said probation committee or probation officer to examine into the qualifications and management of any society, association or corporation, other than a state institution, receiving or applying for any child or children under this act, and to report thereon to the court.

It shall be the duty of each probation committee, prior to the first day of December in each year, to prepare a report in writing on the qualifications and management of all societies, associations and corporations, except state institutions, applying for or receiving any child under this act from the courts of their respective counties, and in such reports said committee may make such suggestions or comments as to them may seem fit, such report to be filed in the office of the clerk of the court appointing such committee for the information of the county commissioners thereof. The probation committee shall also have the control and management of the internal affairs of any detention home, heretofore or hereafter established by the board of county commissioners of their county, such control and management at all times to be subject to the approval of the district court or judge or judges thereof, and it shall be the duty of the board of county commissioners to provide for the payment of such employees as may be needed in the efficient management of such detention home.

Dependent and Neglected Children. If the court shall find any child under the age of eighteen years to be dependent or neglected within the meaning of this act, the court may allow such child to remain at its home subject to the friendly visitation of a probation officer, or to report to the court or probation officer from its home or school at such times as the court may require. And if parent, parents, guardian or custodian consent thereto, or if the court shall further find that the parent, parents, guardian or custodian of such child are unfit or improper guardians or are unable or unwilling to care for, protect, train, educate, correct or discipline such child and that it is for the interest of such child and other people of this state that such child be taken from the custody of its parents, custodian or guardian, the court may make an order appointing as guardian of the person of such child some reputable citizen of good moral character, and order such guardian to place such child in some suitable family, home or other suitable place which such guardian may provide for such child, or the court may enter an order committing such child to some suitable state institution

of this or any other state, organized for the care of dependent or neglected children, or to the Nevada school of industry, and no child thus committed shall be committed to said school for a longer term than until he or she shall attain the age of 21 years, but the board of government of such institution or school, by its order, may at any time after six months service discharge any child from the institution or school as a reward of good conduct and upon satisfactory evidence of reformation. The board shall have the power to establish rules and regulations under which any child placed in said institution or school may be allowed to go out upon parole outside of the buildings and enclosures, but to remain in the legal custody and under the control of the board of government and subject at any time to be taken back within the enclosures of the institution. Full power to enforce such rules and regulations and to retake and keep any child so upon parole is hereby conferred upon said board, whose written order, certified by its secretary, shall be sufficient warrant for all reasons named therein to authorize any officer to return to actual custody any conditionally released or paroled child; and it is hereby made the duty of all officers to execute such order the same as in ordinary criminal process. *As amended, Stats. 1917, 70; 1919, 35.*

Under Rev. Laws, 4093, providing that any district judge upon a showing that an orphan is the child of parents one or both of whom were, at the time of their decease, residents of the state, and that the condition of the orphan is such that it would be for his best interest to be admitted to such home, may commit the orphan to the home at the expense of the county, and that the directors at their discretion may receive any child from a living resident parent or guardian, and require such parent or guardian to contribute to its support, but that no child shall be so received unless sent by the county commissioners of the county in which the child resides, who shall agree to pay for its maintenance, and this section, as amended, providing for the commission of dependent and neglected children to any suitable state institution organized for the care of dependent or neglected children, and Rev. Laws, 728, under which "dependent and neglected children" include those having immoral, evil, or incorrigible tendencies, the court could not commit to the state orphans' home a dependent or neglected child who is not an orphan, since an "orphans' home" is an institution or home for the care of destitute orphans, and not a "reformatory" in which young offenders are confined and instructed, with a view to their reformation. *McKinnon v. Harwood, 35 Nev. 494, 501 (130 P. 465).*

739. Guardianship, how perfected.

SEC. 12. Any child found to be dependent or neglected or delinquent as defined in this act and awarded by the court to a guardian institution or association, shall be held by such guardian institution or association, as the case may be, by virtue of the order entered in such case, and the clerk of the court shall issue and cause to be delivered to such guardian or association a certified copy of such order of the court, which certified copy of such order shall be proof of such guardian institution or association in behalf of such child. The guardianship under this act shall continue until the court shall by further order otherwise direct, but not after such child shall have reached the age of twenty-one (21) years, but if the parent or parents or grandparent or grandparents of such dependent or neglected child are poor and cannot properly care for, maintain and properly educate such child, but are otherwise proper guardians and a person or persons of good reputation and morals, and shall covenant and agree that such child shall attend school regularly during all school days, when such child is of school age, or until said child shall have completed the eighth grade of the public grammar school, or school of like grades of studies, or have graduated in bookkeeping and commercial course, the court may enter an order finding such facts, and fixing the amount of money necessary to enable the

parent or parents or grandparent or grandparents to properly care for and educate such child, providing such amount shall not exceed the amount it would cost the county to have such child maintained and educated at any county or state home, or place provided for dependent or neglected children, in the State of Nevada, and thereupon it shall be the duty of the county board through its county agent, or otherwise, to pay to such parent or parents, or grandparent or grandparents, or blood aunt or blood uncle, the amount specified at such times as said order may designate for the care of such neglected or dependent child, until the further order of the court, and the court shall cease to sanction the payment of the specified amount whenever it shall appear that such child is not receiving the benefit it should from the payment of said specified amount of money.

Penalties for violation.

SEC. 2. Any person or persons who shall violate any of the provisions of the said act as amended shall, upon conviction thereof, be fined in any sum of money not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or not less than sixty (60) days nor more than two hundred days (200) in the county jail, or by both such fine and imprisonment.

Repeal—Penalties.

SEC. 3. All laws or parts of laws in conflict with this act as amended are hereby repealed. Any person or persons violating the provisions of this act as amended shall, upon conviction thereof, be fined in any sum of money not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or not less than sixty (60) days, nor more than two hundred days (200) in the county jail, or by both such fine and imprisonment. *As amended, Stats. 1913, 173.*

An Act regulating the employment of children and providing penalties for the violations of the provisions of said act.

Approved March 25, 1913, 354

Not to labor during school hours.

SECTION 1. It shall be unlawful for any person, firm or corporation to employ any child under fourteen (14) years of age, in any business or service whatever during the hours in which the public schools of the district, in which the child resides, are in session.

Not to work in certain callings.

SEC. 2. No child under the age of sixteen (16) years shall be employed, permitted or suffered to work in any capacity in, about, or in connection with the preparing of any composition in which dangerous or poisonous acids are used, manufacture of paints, colors or white lead; dipping, drying or packing matches; manufacture of goods for immoral purposes; nor in, about, or in connection with any mine, coal breaker, quarry, smelter, ore-reduction works, laundry, tobacco warehouses, cigar factory, or other factory where tobacco is manufactured or prepared, distillery, brewery, or any other establishment where malt or alcoholic liquors are manufactured, packed, wrapped or bottled; nor in any other employment declared by the state board of health to be dangerous to lives or limbs, or injurious to the health or morals of children under the age of sixteen (16).

State board of health to decide.

SEC. 3. The state board of health may from time to time determine

whether or not any particular trade, process of manufacture, or occupation, or any particular method of carrying on such trade, process of manufacture or occupation is sufficiently dangerous to the lives or limbs, or injurious to the health or morals, of minors under sixteen (16) years of age employed therein to justify their exclusion therefrom, and may prohibit their employment therein.

Duties of certain officers.

SEC. 4. The state superintendent, or other authorized inspector or school attendance officer, shall make demand on an employer in or about whose place or establishment a child apparently under the age of fourteen (14) years is employed, or permitted or suffered to work, during the hours in which public schools of the district are in session; that such employer shall either furnish him within ten (10) days satisfactory evidence that such child is in fact over fourteen (14) years of age, or shall cease to employ, or permit or suffer such child to work.

Other callings prohibited.

SEC. 5. No child under the age of sixteen (16) years shall be employed, permitted or suffered to work in, about or in connection with glass furnaces, smelters, or ore-reduction works, in the outside erection and repair of electric wires, in the running or management of elevators, lifts, or hoisting machines, in oiling hazardous or dangerous machinery in motion, at switch tending, gate tending, track repairing, as brakeman, fireman, engineer, motorman, conductor upon any railroads in or about establishments where nitroglycerine, dynamite, dualin, guncotton, gunpowder or other high or dangerous explosives are manufactured, compounded or stored; nor in any other employment declared by the state board of health to be dangerous to the lives or limbs, or injurious to the health or morals of children under the age of sixteen (16) years.

State health board to decide.

SEC. 6. The state board of health may from time to time determine whether or not any particular trade, process of manufacture, or occupation, or any particular method of carrying on such trade, process of manufacture or occupation is sufficiently injurious to the lives or limbs, or injurious to the health or morals of the minor under the age of sixteen (16) years, employed therein to justify their exclusion therefrom, and may prohibit their employment therein.

Messengers, age of.

SEC. 7. In incorporated cities and towns no person under the age of eighteen (18) years shall be employed or permitted to work as a messenger for a telegraph or messenger company in the distribution, transmission or delivery of goods or messages before 5 o'clock in the morning, or after 10 o'clock in the evening of any day.

Eight hours a day's work.

SEC. 8. No boy under the age of sixteen (16) years and no girl under age of eighteen (18) years shall be employed, permitted or suffered to work at any gainful occupation, other than domestic service or work on a farm, more than forty-eight hours in any one week, nor more than eight hours in any one day. The presence of a child in any establishment during working hours shall be prima facie evidence of its employment therein.

Penalties for violation.

SEC. 9. Whoever employs any child, and whoever having under his control as parent, guardian, or otherwise, any child, permits or suffers any

child to be employed or to work in violation of any of the provisions of this act, shall for such offense be fined not less than five (\$5) dollars nor more than two hundred (\$200) dollars or to be imprisoned for not less than ten (10) days nor more than thirty (30) days, or both in the discretion of the court.

Other penalties.

SEC. 10. Whoever continues to employ any child in violation of any of the provisions of this act, after being notified thereof by a school attendance officer, or other authorized officer, shall for every day thereafter that such employment continues be fined not less than five (\$5) dollars nor more than twenty (\$20) dollars.

Stats. 1913, 403, repealed by implication by Stats. 1914, 334.

See Feeble-Minded Children, Stats. 1913, 576, post.

CHIROPODY

An Act to regulate the practice of chiropody, and provide for the requirements for a certificate to practice same.

Approved March 14, 1917, 123

Definition.

SECTION 1. For the purpose of this act chiropody is defined to be the surgical treatment of abnormal nails and superficial excrescences occurring on the feet, such as corns, callosities, and the treatment of bunions; but a certificate hereunder shall not confer the right to operate upon the feet for congenital or acquired deformities, or for the conditions requiring the use of anesthetics other than local, or incisions involving structures below the level of the true skin.

To pass examination.

SEC. 2. All applicants for a certificate to practice chiropody, after filing an application with the board of medical examiners must pass a written examination in the following subjects: Elements of anatomy, histology, physiology, chemistry, hygiene, pathology, bacteriology, dermatology, syphilis, orthopedics, surgery, chiropody, and therapeutics, sufficient to satisfy said board of their qualifications to practice chiropody.

Fee for examination.

SEC. 3. A fee of fifteen dollars (\$15) shall be charged for filing the application, which must be filed with the clerk or secretary of the board of medical examiners at least two weeks previous to the date of examination.

Applications, when filed.

SEC. 4. Applications must be on file, duly completed and accompanied by above-mentioned fee, at least two weeks preceding the meeting of the board, and no application that is not complete in every detail will be acted upon by the board.

Certificates to be issued.

SEC. 5. A majority of the board of medical examiners shall constitute a quorum to transact all business, and all certificates issued by said board shall bear its seal and the signatures of the president and secretary, and

shall authorize the person to whom it is issued for that purpose to practice chiropody in any and all counties in this state upon complying with the requirements of this act.

Exception.

SEC. 6. This act shall not apply to persons who have been practicing chiropody in this state continuously for a period of six months prior to the passage of this act, providing it can be satisfactorily shown to the board that such practice is in compliance with the law.

Penalty.

SEC. 7. Any person who shall practice chiropody, as herein defined, without having complied with the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than twenty-five dollars, nor more than one hundred dollars for each and every offense.

CITIES AND TOWNS

767-876. Cited, *Quilici v. Strosnider*, 34 Nev. 22 (115 P. 177).

768. Mode of procedure to attain incorporation.

SEC. 2. Whenever a majority of the qualified electors who are taxpayers within the limits of the city or town proposed to be incorporated, as shown by the last official registration lists and assessment roll, not embraced within the limits of any city or incorporated town (shall desire to be organized into a city or incorporated town), they may apply in writing to the district court of the proper county, which application shall describe the territory to be embraced in such city or incorporated town, and shall have annexed thereto an accurate map or plat thereof, duly surveyed, and containing the streets and alleys, and state the name proposed for such city or incorporated town, and shall be accompanied with satisfactory proof of the number of inhabitants within the territory embraced in said limits, for purposes of classification under the provisions of this act; and shall also be accompanied by an affidavit, made by some person familiar with the facts, that all of the names subscribed to said application or petition for incorporation were subscribed thereto not more than ninety days before said application or petition was presented to said district court. *As amended, Stats. 1913, 15.*

802. Certain officers elected—Certain appointed.

SEC. 36. In addition to the mayor and city council, there may be elected in each city of the first or second class a city clerk, a city treasurer, a judge of the municipal court, a city attorney. All elective officers shall hold their respective offices for two years and until their successors are elected and qualified. In cities of the third class, the mayor, by and with the advice and consent of the city council, may appoint any or all of such officers as may be deemed expedient, and such appointive officers shall hold their respective offices during the pleasure of the mayor and city council. *As amended, Stats. 1915, 66.*

848. Estimates to be made—Notices to be published.

SEC. 82. Before ordering any public improvement or repairs as provided in the last preceding section, any part of the expense of which is to be

defrayed by special assessment, the council shall cause estimates of the expenses thereof to be made, and also plats and diagrams, when practicable, of the work and the locality to be improved, and shall file such plats and diagrams with the city clerk for public examination; and they shall give notice thereof and of the proposed improvement, or work, of the location of the improvement and of the district to be assessed, by publication for at least two weeks in some newspaper published in said city, and by posting notices of the same in at least three public places in each ward, and also by posting a notice in or near the postoffice in said city, and by posting notices in three public places near the site of said proposed work. Said notices shall state the time when the council will meet and consider any suggestions and objections that may be made by parties in interest with respect to the proposed improvements. Unless the owners of more than one-half of the frontage to be assessed shall file written objections thereto, the improvement or work shall be ordered. *As amended, Stats. 1915, 85.*

871. Cities disincorporated, how.

SEC. 105. Whenever one-fourth of the legal voters of any city now existing or hereafter created, whether by general or special law, shall petition the district court in and for the county wherein such corporation is situated for the disincorporation of said city, it shall cause to be published, for at least thirty days, a notice stating the question of disincorporating such corporation will be submitted to the legal voters of the same at the next municipal election, and the form of the ballot shall be "For Disincorporation" or "Against Disincorporation." Not more than one of such elections shall be held in two years. *As amended, Stats. 1915, 35.*

877. Powers of county commissioners.

SECTION 1. In addition to the powers and jurisdiction conferred by other laws, the boards of county commissioners of the counties of this state shall have the following with regard to the management of the affairs and business of any unincorporated town or city in their respective counties:

First—To fix and define the boundary of such town or city within which the jurisdiction herein conferred shall be exercised; *provided*, that in the case of any disincorporated town or city the boundaries shall be fixed at the time of such disincorporation, but any change of such boundaries may be made by the board upon petition of a majority of the taxpayers thereof.

Second—To institute and maintain any suit or suits in any court or courts necessary in their judgment to enforce and maintain any right or rights of said town or city; all such suits shall be prosecuted in the name of the board of county commissioners for the use and benefit of the inhabitants of said town or city, and shall be entitled accordingly in all pleadings and proceedings.

Third—To levy a tax, not exceeding one and one-half per cent per annum, upon the assessed value of all real and personal property (including proceeds of mines) situated in said town or city, made taxable by law for state and county purposes.

Fourth—To lay out, extend and alter the streets and alleys in said town or city, and provide for the grading, draining, cleaning, widening, lighting or otherwise improving the same; also, to provide for the construction, repair and preservation of sidewalks, bridges, drains and sewers, and for the prevention and removal of obstructions from the streets and sidewalks of said town or city; *provided*, that said board may, in its discretion, assess the cost of improving any street or building, or repairing a sidewalk, to the owner or owners of the property in front of which said street, or sidewalk or proposed sidewalk may be, and may make such cost of improvement, repairs, or building, a lien upon such property.

Fifth—To condemn property for the use of the inhabitants of said town or city, in the manner hereinafter provided.

Sixth—To provide for the prevention and extinguishment of fires, and organize, regulate, establish and disband fire companies or fire departments in said city or town and to provide for the payment thereof and the appointment and payment of officers thereto; *provided*, that all such payments shall be made from the separate fund of the city or town where service is performed or required; *and provided further*, that the chief engineer of the fire department shall receive compensation in a sum not to exceed one hundred and fifty (\$150) dollars per month; the assistant chief engineer of the fire department not to exceed one hundred and twenty-five (\$125) dollars per month; and all other employees of the fire department not to exceed one hundred (\$100) dollars per month; *and further provided*, that a majority of the board of county commissioners shall name and appoint two-thirds of all such officers and employees, and the minority thereof shall name and appoint one-third.

Seventh—To regulate the storage of gunpowder and other explosive or combustible materials within said town or city.

Eighth—To determine what shall be nuisances in such town or city, and provide for the punishment, prevention and removal of the same.

Ninth—To fix and collect a license tax on, and regulate all places of business and amusement so licensed, as follows, to wit: Artisans, artists, assayers, auctioneers, bakers, bankers, barbers, billiard tables, boiler-makers, boot- and shoe-makers and cobblers, bowling alleys, brokers, factors and general agents, commission merchants, circus, caravan or menagerie, concerts and other exhibitions, dance-houses, saloons or cellars and places where soft drinks are kept or sold, express and freight companies, foundries, gaming hawkers and peddlers, hay-yards, wagon-yards and corrals, hotels, boarding-houses and lodging-houses, illuminating gas, electric-light companies, power companies, telephone companies, water companies, express companies, banks and bankers, insurance agents, job-wagons, carts and drays, laundries, livery and sale stables, lumber-yards, manufacturers of liquors and other beverages, manufacturers of soap, soda, borax or glue, markets, merchants and traders, milliners and dress-makers, newspaper publishers, pawnbrokers, restaurants and refreshment saloons, barrooms, shooting galleries, skating rinks, solicitors, drummers, mercantile agents, stages and omnibusses, stockbrokers, tailors, clothes-cleaners, telegraph companies, theaters, melodeons and other exhibitions, undertakers, wood and coal dealers, having due regard to the amount of business done by each person or firm so licensed; to license, tax and regulate, prohibit and suppress all tippling houses, dram-shops, public card tables, raffles, hawkers, peddlers and pawnbrokers, gambling-houses, disorderly houses, and houses of ill-fame; to levy and collect an annual tax on all dogs owned or kept within the limits of said town or city, and to provide for the extermination of all dogs for which such tax shall not have been paid, and to prohibit the keeping of hogs or the running at large of goats, cows or other animals within the limits of said town or city; to fix and collect a license tax upon all professions, trades or business within said town or city not heretofore specified.

Tenth—To provide for the issuance of all licenses in this act mentioned or authorized to be issued, and to fix the terms on which and the sums for which the same shall be issued.

Eleventh—To prevent, punish and restrain any disorderly conduct within said town or city; to establish and maintain a board of health.

Twelfth—To hold, manage, use and dispose of the real and personal property of said town or city, and collect all dues and demands belonging to or coming to the same; but no sale of any such property shall be made

until after it be appraised by three appraisers, taxpayers of said town or city, at the actual market value, nor shall it be sold for less than three-fourths of such appraised value.

Thirteenth—To fix and prescribe the punishment for the breach of ordinance made or adopted by said board of county commissioners, to be enforced within said town or city; but no fines shall be imposed for one offense in a sum greater than five hundred (\$500) dollars, and no term of imprisonment shall be more than six months, but in lieu of imprisonment any person committed for punishment may be made to work on any public work in said town or city, and to that end a chain-gang may be formed, continued and operated.

Fourteenth—To pass or adopt all ordinances, rules and regulations, and do and perform all other acts and things necessary for the execution of the powers and jurisdiction by this act conferred; *provided*, that all ordinances of said town or city in force at the date of the assumption of said board of county commissioners of the powers and duties by this act conferred or imposed, and not inconsistent therewith shall remain in full force and be enforced until changed or repealed by such board; *and provided further*, that no ordinance passed by said board shall be in force or effect until published for one week.

Fifteenth—To audit and allow all claims properly payable out of the funds of said town or city. Any property, real or personal, necessary for the public use of said town or city, or the inhabitants thereof, may be condemned and appropriated in the following manner: The board of county commissioners shall appoint one referee and the claimant or claimants, or owner or owners of the property sought to be condemned, shall appoint one referee, and in the event the two referees so appointed shall not agree in the valuation of the property or the interest or interests claimed therein, then the two so appointed shall select a third referee, and the decision of the majority of such three, as to the valuation of the property or the interest or interests therein by them appraised, shall be reported to said board of county commissioners, and shall be by them regarded as final and binding, unless the party deeming himself aggrieved by the decision of such referees shall appeal therefrom to the district court of the proper county within thirty days after notice of such decision shall have been served upon him; and upon the tender, in gold coin, of the sum named as the value of such property interest or interests to the claimant or claimants, owner or owners thereof, or his or their agent or attorney, such property, or the interest or interests therein appraised, shall become and be the property of said town or city, and said board of county commissioners may, at any time after twenty days notice, cause the sheriff of the county to remove all persons and obstructions from such property, in case the same be real, and may take immediate possession of the condemned property, whether the same be real or personal. In case the claimant or claimants, owner or owners of property sought to be condemned, as herein provided, shall refuse or neglect, when required by the board of county commissioners, to appoint a referee to value such property, then said board of county commissioners shall constitute a board of appraisers of such property, and their valuation of the same shall be final and binding, subject to right of appeal, as hereinbefore provided; but no act of condemnation of property, or of any claim of interest therein as herein provided, shall be deemed or held as an admission on the part of said town or city, or the inhabitants thereof, of the legality of the asserted claim thereto or right therein; and in the condemnation of property, as in this act provided, the referees or county commissioners, as the case may be, shall consider whether the proposed improvement, for which said property is so condemned, will be of any benefit to the person or persons owning or claiming

the said property or some interest therein, and if they find that the same will be a benefit to such person or persons they shall estimate the value of such benefit to him or them, and deduct the amount thereof from the estimated value of the property or interest therein condemned. *As amended, Stats. 1919, 408.*

The proviso of this section, reading that in all unincorporated cities and towns the board of county commissioners shall have power to fix and collect a tax upon certain businesses and amusements, and none other, does not apply to towns which established their form of government after the unincorporated town act (Stats. 1879, 103) had been repealed by Stats. 1887, 51, or to towns which, by reason of their having a voting population of 600 or more, ipso facto come under the general town government act, the term "unincorporated towns" not referring to all towns within the state not incorporated; as to give it such an interpretation would nullify the grant by the legislature in the body of the act of power to boards of county commissioners to levy and collect a license tax upon numerous specific businesses, but referring specifically to towns which have assumed a form of town government under the act of 1879, 103. *Nye County v. Schmidt, 39 Nev. 456-465 (157 P. 1073).*

895. Tax for fire department in unincorporated towns.

SECTION 1. The county commissioners of the various counties of the State of Nevada are hereby empowered to levy and collect a tax of not exceeding one and one-half per cent upon the assessed value of property within any unincorporated town for the benefit of the fire department in such town. *As amended, Stats. 1913, 12.*

949. May acquire public utilities, when.

SEC. 10. The provisions of this act shall apply to any unincorporated city or town within this state, which is now or may hereafter be subject to the provisions of an act of the legislature entitled "An act providing for the government of cities and towns of this state," approved February 26, 1881, and all acts amendatory thereof or supplementary thereto. Wherever the convenience of the inhabitants thereof will be benefited thereby the county commissioners may join and consolidate two or more unincorporated towns into one sewerage, light or water system district. *As amended, Stats. 1917, 405.*

Vacating unoccupied portion of plat—Procedure.

SEC. 10A. Where a portion of any plat has for five years remained unoccupied, and the streets and alleys thereof are not necessary to the use and convenience of the residents of the occupied portions of such plats, and where such unoccupied portion is bounded on at least one side by a boundary of such plat, application in writing to vacate such unoccupied portion, setting forth such facts, may be made to the city council of the city wherein such land is situated and in all other cases to the board of county commissioners of the county wherein said land is contained, which petition shall be signed by all the owners of land in the portion of such plat proposed to be vacated. Copy of such petition shall be published in some newspaper of general circulation published in such town or city, and if none be published therein, then in some newspaper published nearest in the county, for at least once a week for four consecutive weeks, which said publication shall be deemed due and sufficient notice to all parties in interest of nature and purpose of such petition. Upon the filing of such application and proof of publication, the city council or board of county commissioners, as the case may be, shall, at its next regular meeting, proceed to hear, consider and dispose of the same as provided in section 10 of this act; *provided*, that any person claiming material injury by any order vacating any portion of a plat under the provisions of this section may at any time within six months after the date of such order commence an

action in the district court to have such order set aside. *Added, Stats. 1915, 392.*

975-83. Repealed, Stats. 1917, 254.

978. This section does not authorize a city organized under a special charter, which gave the trustees power to improve the streets and to issue bonds subject to the rights of the voters to petition for a special election on the question, to make a temporary loan to pay for the paving of street intersections on its main street, since "great necessity or emergency" means something greatly out of the ordinary, which could not be met by the usual machinery of the government, immediately indispensable, and does not include what is merely essential in the sense of being convenient. *Chartz v. Carson City, 39 Nev. 285, 292, 297, 298 (156 P. 925).*

980. See *Chartz v. Carson City, 39 Nev. 285*, under section 978.

981. See *Chartz v. Carson City, 39 Nev. 285*, under section 978.

991. May issue bonds for street improvements.

SECTION 1. Any incorporated town or city in the State of Nevada, whether incorporated under a general or special act, may, by ordinance, cause to be issued bonds of the town or city to be called "(insert name of street) Street Improvement Bonds," payable in annual periods of one to not more than ten years from date, and to bear interest payable annually, not exceeding the rate of seven per cent per annum; and said bonds shall not be sold for less than their par value. Such bonds shall be issued for the purpose of paying the cost of laying the cement sidewalks, paving, macadamizing or otherwise improving the streets and alleys in said town or city, exclusive of the intersections of streets and spaces opposite alleys therein; *provided*, that the entire cost of laying the cement sidewalks, or paving or macadamizing or otherwise improving any such streets, avenues or alleys, properly chargeable to any blocks, lots or lands, or parts thereof, within the district assessed, may be paid by the owner of such lots or land within fifty days from the levy of such special taxes, and thereupon such lots or lands shall be exempt from any lien or charge therefor. *As amended, Stats. 1913, 114.*

993. City charter must be complied with.

SEC. 3. When the council of any such city or town shall determine to make any of the public improvements above mentioned, it may, in the ordinance declaring such determination, also declare whether or not bonds shall be issued to pay for the cost of such improvement as provided in this act; and in case it is decided to issue bonds as herein provided, the assessments to pay for the cost of such improvements shall be made as provided in the charter of said city or town or act under which the same is incorporated. If said assessments are not all paid by the property owners against whom they are levied, at the end of fifty (50) days from the time they become a lien, the said council shall, within a reasonable time thereafter, pass an ordinance directing the issuance of bonds herein provided, fixing their form, declaring the amount remaining unpaid, denominations and interest, the lots or parcels of land against which the said assessments remaining unpaid in whole or in part are a lien, and the names of the owners thereof, where known, with the amounts due thereon, and directing that the said unpaid assessments or portions thereof shall thereafter be paid in the manner and at the time to be decided by the council and set forth in the ordinance directing the issuance of the bonds. Each of the said installments shall bear interest from the end of the said fifty (50) days until due at the same rate of interest as that provided for in the bonds, payable annually, which rate shall be fixed by the ordinance. Such

installments and the interest thereon shall be and remain a lien on the said lots and parcels of lands until paid, and shall be collected in the same manner as other delinquent special assessments; *provided*, that the council may in the ordinance directing the issuance of the bonds provide that the unpaid assessments or portions thereof as herein contained shall be placed on the state and county tax roll and collected in the same manner and at the same time as other state and county general taxes are collected, and the several officers of the several counties of this state are hereby authorized and empowered to provide for and collect the said unpaid assessments or portions thereof as herein contained in all cases where the same are directed to be paid and collected in this manner by the city council or other governing board of any incorporated town or city in the State of Nevada. *As amended, Stats. 1913, 114.*

Effective, when.

SEC. 3. This act shall take effect upon its passage and approval, and nothing contained in any city charter or general law of the State of Nevada shall be considered as abrogating or nullifying any of the provisions of this act, and any special assessments which have heretofore been legally levied for work done, the issuance of bonds to pay for which has not been provided for, may be governed by the provisions of this act in its amended form; *provided*, that this act shall not invalidate or in any way affect bonds which have heretofore been issued under the provisions of the act of which this act is amendatory. *Added, Stats. 1913, 115.*

An Act to provide for the commission form of government for cities and towns.

Approved March 22, 1915, 294

Commission form of government.

SECTION 1. Any city or town in the State of Nevada may adopt the commission form of government and frame its own charter therefor. By a "commission form of government," as used in this act, is meant any form of municipal government not contrary to the constitution and laws of the United States, under which both legislative and administrative authority is exercised by the same governing body, members of which are elected by the qualified electors of such city or town. *As amended, Stats. 1919, 366.*

Petition for election—Qualification of members.

SEC. 2. Whenever the qualified voters of any city or town desiring to adopt a commission form of government so declare their desire by filing with the legislative authority of such city or town, if incorporated, and if not incorporated by filing with the county commissioners of the county in which such city or town is located, a petition having the signatures of one-fourth of the qualified voters, voting at the last city or precinct election, embraced in the territory to be incorporated, if not incorporated, such legislative authority or county commissioners shall, within twenty days after ascertaining that such petition contains the required number of signatures of the qualified electors therein, call an election, by ordinance or resolution, of the voters of such city or town, to be held therein, for the purpose of electing fifteen qualified electors, who shall have been residents of said city or town for the period of at least two years preceding their election, for the purpose of framing a charter for such city or town, having for its objects the commission form of government therefor.

Nominated by petition.

SEC. 3. Nominations for such electors shall be made by petition of one-fifth of the qualified voters of such city or town, and such nominations

must be made and filed with the legislative authority of such city or town at least five days before the day of election as provided for in section 2 of this act, and the names of all candidates so filed shall be placed upon the official ballots to be voted at such election, which election shall be conducted under the general election laws of the state.

Canvass of returns—Charter election.

SEC. 4. Within five days from the date of such election the legislative authority of such city or town, if incorporated, or the county commissioners, if unincorporated, shall meet and canvass the returns of such election and declare the result thereof and issue election certificates to the fifteen having the highest vote therefor. It shall be the duty of the persons so elected to convene within ten days after the election and frame a charter for such city or town; and within thirty days thereafter they, or a majority of them, shall submit such charter to the legislative authority of such city or town or county commissioners, who shall, within five days thereafter, cause the same to be published in a newspaper published in said city or town, or in the county, if a newspaper be published therein, and if no newspaper be published in said city or town or county, by posting copies thereof in three of the most public places of such city or town, for the period of thirty days; and upon the affidavit of such publisher or of the person posting the same being filed with the clerk of such city or town, if incorporated, or with the county clerk, if unincorporated, showing a complete compliance with the above provision, that the same has been published or posted for the period of thirty days, which affidavit shall be made immediately after the last publication, if published, and immediately after the posting, if posted, the legislative authority of such city or town, or the county commissioners in cases of unincorporated towns, shall, within five days thereafter, provide for the submission thereof to the qualified voters of such city or town, giving at least ten, and not to exceed twenty, days' notice in three conspicuous places in said city or town or embraced in the territory to be incorporated, which notice shall specify the object for which said election is called. Said election shall be conducted under the general election laws of the state and of the city or town. The form of ballot at such election shall be: "For the proposed charter," "Against the proposed charter." In submitting such proposed charter, or amendments thereto, any alternative article or proposition may be presented for the choice of the voters of such city or town and may be voted on separately without prejudice to others. In submitting such amendments, article, or proposition the form of ballot shall be: "For Article No. of the charter," "Against Article No. of the charter."

Charter effective, when.

SEC. 5. The officers conducting such election shall make returns thereof within the time and in the manner provided by the election laws of such city or town or the state election laws, and the vote thereof shall be canvassed and the result declared as provided by such laws; and if upon such canvass it shall be found that a majority of the votes so cast at such election were cast in favor of the ratification of such charter, the same shall become the organic law of said city or town, and shall supersede any existing charter, and all amendments thereto and all special laws inconsistent therewith, when authenticated, recorded, and attested as herein provided. The mayor or the board of county commissioners of such city or town shall, thereupon, attach to said charter a certificate in substance as follows:

I, _____, mayor (or chairman of the board of county commissioners, as the case may be) of _____, do hereby certify

that in accordance with the terms and provisions of section 8 of article 8 of the constitution, and the laws of the State of Nevada, the of the city of city or town of, duly caused a election to be held on the day of, 19...., for the purpose of electing fifteen qualified electors to prepare a charter for the city of; that due notice of such election was given in the manner provided by law; that on the day of, 19...., said election was held, and the votes cast thereat were duly canvassed by the legislative authority of said city or town, and the following-named persons were declared duly elected to prepare and propose a charter for said city or town of That thereafter, to wit, on the day of, 19...., said board of electors duly returned a proposed charter for the city or town of, signed by the following members thereof, to wit:..... That thereafter such proposed charter was duly published in a newspaper, or posted in three of the most public places in said city or town, to wit: For a period of thirty days, said publication in said newspaper commencing on the day of, 19...., or was posted on the day of, 19.... That thereafter on the day of, 19...., at a election duly called by the legislative authority of such city or town, the proposed charter was submitted to the qualified electors thereof, and the returns of such election were duly canvassed by the legislative authority thereof at a meeting held on the day of, 19...., and the result of said election was found to be as follows: For said proposed charter, votes; against said proposed charter, votes. Majority for said proposed charter, votes. Whereupon the said charter was duly ratified by a majority of the qualified electors voting at said election. And I further certify that the foregoing is a full, true, and complete copy of the proposed charter so voted upon and ratified as aforesaid. In testimony whereof, I hereunto set my hand and affix the corporate seal of said city or town at my office this day of, 19....

....., Mayor of the city or town of

Attest:, Clerk of the city or town of

Such charter shall immediately thereafter be recorded by the clerk of said city or town in a book to be provided and kept for that purpose and known as the charter book of the city or town of, and when so recorded shall be attested by the clerk and mayor of said city or town under the corporate seal thereof, and thereafter any and all amendments to said charter shall be in a like manner recorded and attested, and when so recorded and attested all courts in this state shall take judicial notice of said charter and all amendments thereto.

Powers of city.

SEC. 6. Any such city or town having adopted such a charter shall have, under said charter, all of the powers enumerated in the general laws of the state for the incorporation of cities and towns, and such other powers necessary and not in conflict with the constitution and laws of the State of Nevada to carry out the commission form of government; and such charter, when submitted, shall fix the number of commissioners, their terms of office, and their duties and compensation, and shall provide for all necessary appointive and elective officers for the form of government therein provided, and fix their salaries and emoluments, their duties and powers, and shall fix the time for the first and subsequent elections for all elective officers; and, after such first election and the qualification of the officers thereat elected, the old officers, and all houses, boards, or officers

shall be abolished, together with the emoluments thereof, and shall cease to exist; and if this form of government shall be adopted by any unincorporated city or town, the county commissioners shall fix the boundaries of such new city or town in accordance with the petition therefor, and shall, by resolution, declare such city or town duly incorporated under the provisions of this act.

Same.

SEC. 7. Any city or town adopting a charter under the provisions of this act shall have all of the powers which are now or may hereafter be conferred upon incorporated cities and towns by the laws of the state, and all such powers as are usually exercised by municipal corporations of like character and degree, whether the same shall be specifically enumerated in this act or not.

Referendum election.

SEC. 8. Amendments to the charter adopted by any city or town under the provisions of this act may be proposed and submitted to the qualified voters by a majority of the commissioners, and shall be so submitted upon petition signed by ten per centum of the qualified voters, voting at the last regular city or town election, setting forth the proposed amendments, which submission shall be made at the next regular city or town election, and all such amendments submitted shall be placed upon the official ballot in the same manner as was the original charter.

SEC. 9. Repealed, Stats. 1919, 56.

An Act relating to the incorporation of cities and towns and providing for the automatic disincorporation thereof in certain cases, and other matters relating thereto.

Approved March 10, 1919, 48

Certain towns cannot be incorporated.

SECTION 1. That no city or town in this state shall be organized into an incorporated city or town unless the whole number of votes cast by electors residing within the limits of such city or town for justice of the supreme court at the general election last preceding the application for incorporation was more than two hundred and fifty (250) votes.

Such towns disincorporated.

SEC. 2. If the whole number of votes cast for justice of the supreme court at the last preceding general election, by electors residing within the limits of any incorporated city or town, was less than two hundred and fifty (250) votes, such city or town shall be and is disincorporated from and after the passage and approval of this act.

Towns disincorporated in future.

SEC. 3. If the whole number of votes cast in the future for justice of the supreme court at any general election by electors residing within the limits of any incorporated city or town shall be less than two hundred and fifty (250) votes, such city or town shall be disincorporated from and after the first Monday in March next succeeding such general election.

Automatic operation of law.

SEC. 4. The disincorporations mentioned in this act shall operate without further act or enactment from any source whatsoever.

Duties of county commissioners.

SEC. 5. Whenever any city or town shall become disincorporated by the

force of this act, the board of county commissioners of the county wherein such city or town is situated shall immediately establish a special district identical in boundaries and territory with the disincorporated city or town and shall proceed to wind up the affairs of the late corporation; to dispose of its property; to make provision for the payment of all indebtedness thereof and for the performance of its contracts and obligations, and shall levy such taxes from time to time against the property within such special district as may be requisite therefor. Such taxes shall be collected by the county treasurer like other taxes and paid out under the orders of the board of county commissioners, and any surplus shall be paid into the school fund for the school district where the same is levied and all property remaining shall revert to such school district, which is hereby empowered to enforce all claims and to have the use of all property so vesting. If there shall be any debt or outstanding bonds of any disincorporated city or town the board of county commissioners shall provide for the payment of the principal and interest of the same substantially in the time, manner, and form provided by law or ordinance touching the same at the time of disincorporation, substituting the district established in lieu of the city or town disincorporated.

Records, how preserved.

SEC. 6. All books, documents, records, papers, and corporate seal of any disincorporated city or town shall be deposited with the county clerk of the county wherein such city or town may be and all court records shall be deposited with the nearest justice of such county, who shall execute and complete all unfinished business.

Expenses provided for.

SEC. 7. All expenses arising out of disincorporation under the force of this act shall be chargeable against the special district to be established and shall be paid as other indebtedness of such district is paid. Officials and officers whose offices are abolished shall have a claim for one month's salary or compensation dating from the date of disincorporation.

Such towns lose corporate existence.

SEC. 8. From and after the taking effect of this act all cities and towns disincorporated by the force thereof shall lose all corporate existence, and any of their pretended corporate acts and the acts of any of their pretended corporate officers or agents shall be of no effect, null and void.

Governing board may act.

SEC. 9. It shall be lawful for any governing board of any incorporated city or town in this state to cause to be filed in the office of the secretary of state and in the office of the attorney-general its declaration that such city or town is and remains duly incorporated according to law. If such declaration be not substantially true the attorney-general shall immediately proceed according to law to establish or disprove the right of such city or town to act as an incorporated city or town. It shall also be the duty of the attorney-general to consult the official records from time to time and to advise the secretary of state, in writing, declaring the date when any incorporated city or town shall be and become disincorporated by the force of this act, and the secretary of state shall keep such advices in writing on file and of record in his office; *provided, however*, that nothing in this section shall be deemed to provide any condition affecting the taking effect of this act or in any manner postponing the same.

SEC. 10. This act is mandatory except where the contrary clearly appears.

An Act providing for the vacation of portions of city and town plats.

Approved March 13, 1917, 84

Vacation, for what purpose.

SECTION 1. Any owner or owners of platted land in an incorporated city may make application in writing to the city council of the city wherein such land is situated for the vacation of the portion of the plat so owned by him or them, together with such portion of any and all streets, alleys and public ways as adjoin or abut the same, for public school, high school, or other public improvements, but for no other purposes. Such application shall particularly describe the portion of the plat and of the streets, alleys and public ways, sought to be vacated and shall be signed by the applicant or applicants. A copy of such application shall be published at the expense of the applicant or applicants in a newspaper of general circulation published in such city, at least once a week for three successive weeks, which said publication shall be deemed due and sufficient notice to all persons interested of the nature and purpose of such application. Upon the filing of such application and proof of publication with the city clerk, the city council shall, at its next regular meeting, proceed to hear, consider and dispose of the same, and if the said city council be satisfied that neither the public nor any person will be materially injured thereby, it shall order such portion of said plat, streets, alleys and public ways vacated in accordance with such application, a certified copy of which order shall be duly recorded in the office of the recorder of the county wherein such land is situated.

Who may begin action.

SEC. 2. Any person claiming material injury by any order so made by the city council may at any time within sixty days after the date of such order commence an action in the district court having jurisdiction to have such order set aside.

To supplement existing laws.

SEC. 3. This act is intended to supplement, and not to supersede, the existing laws relating to the vacation of city and town plats.

An Act to restore, adopt, fix, amplify, correct and establish, in certain contingencies, city and town plats, and to fix, settle, establish, determine and adjudicate real property rights affected thereby.

Approved March 27, 1919, 232

Certain plats legalized, how.

SECTION 1. That whenever the map or maps, or plat or plats of any city or of any part or subdivision thereof or addition thereto, heretofore filed or recorded in accordance with the then existing law or laws, or that may hereafter be filed and recorded in accordance with this or other subsisting acts, shall, by reason of error or mistake, or lack of sufficient description, or by reason of the fact that the original map or maps, plat or plats, have been lost or destroyed, or by reason of the fact that there have been filed or recorded two or more conflicting maps or plats for such city or part or subdivision thereof or addition thereto, be uncertain or ambiguous; or whenever by reason of the mistaken, faulty, erroneous platting or description of or on any such map or maps or plat or plats, or by reason of the destruction of section-corners or other artificial or natural monuments, there shall be any substantial uncertainty, ambiguity or confusion as to the correct and accurate description or location of the lands, blocks or lots therein described or the lines of the blocks, lots, streets, alleys, highways, parks, school property, cemeteries, or other

pieces or parcels devoted to public use; such lost or destroyed map or maps or plat or plats, may be restored or such faulty, erroneous or ambiguous map or maps, or plat or plats, may be corrected, or the confusion, ambiguity or uncertainty arising by reason of there being two or more conflicting maps or plats, or by reason of the destruction of section-corners or other artificial or natural monuments, may be cured as hereinafter in this act specified.

Duties of legislative board—Map.

SEC. 2. The city council, or other legislative board of any such city, either upon its own motion or resolution or upon the petition of any property holder and taxpayer within said city, affected by such loss, destruction, uncertainty, ambiguity, confusion, or conflict, may instruct and employ the city engineer of said city, or the county engineer of the county in which said city is situate, or any other competent surveyor or civil engineer, to make a complete survey of such city or of such part or subdivision thereof or addition thereto and to prepare a correct and accurate map or plat of such survey, upon which map or plat shall be laid down and delineated all of the blocks, lots, streets, alleys, highways, parks, school property, cemeteries, and other properties devoted to public use. Said map or plat shall show by course and distance accurate ties with well-known and established section- or quarter-section-corner or corners, and with some permanent artificial monument or monuments erected or constructed with definite and exact relation to the center line of the streets of such city or such part or subdivision thereof or addition thereto and with such marks or monuments of original surveys as may be found and identified, together with an accurate description of each such section- or quarter-section-corner, monument, or mark. Said map shall be entitled substantially as follows: "Map of survey of city of..... (or of..... subdivision of or addition to city of....., as the case may be) under the provisions of an act of the legislature of the State of Nevada, approved..... (giving date) and in accordance with a resolution of the board of supervisors of the city of..... (or as the case may be). Passed..... (giving date)." Such map shall bear the sworn certificate of the engineer or surveyor making the same and shall be made upon vellum or tracing cloth, and shall be drawn to a convenient scale sufficiently large to show clearly all lines and corners of blocks, lots, streets, alleys, highways, parks, school property, cemeteries, and other property devoted to public use. Where there is any uncertainty as to the correct position, description, or line of any lot, block, street, alley, or other piece or parcel of property affected, or wherever there is a conflict or contradiction in point, line, numbering, lettering, or other description, by reason of conflicting maps, theretofore filed or recorded, or by reason of mistakes or inaccuracies in any prior map or maps, or plat or plats, or otherwise, the same shall be clearly shown or indicated. Wherever the line on which fences, buildings, or other improvements have been built in accordance with prior maps, plats, or surveys, or otherwise, and the same appear to be in conflict with the lines, points, or directions, as shown in the map or plat herein provided for, such conflict or conflicts shall likewise be clearly shown. Such map may be prepared in as many sections, and with such changes in scale as may be necessary to show clearly the matters herein required.

Compensation of surveyor.

SEC. 3. The city council or other legislative board of said city shall allow to the city engineer or county engineer or other engineer employed for making such survey and maps, a reasonable compensation for his

services and for the services of such assistant or assistants as he may employ in said work and such expenses as are necessary to mark permanently the points and lines of such survey. In the event that the engineer employed shall for any reason fail to complete the work within a reasonable time, said board or council may employ such other and further engineers or surveyors as may be necessary to complete said work.

Copies of maps.

SEC. 4. When said survey has been completed and said map or maps or plat or plats prepared as in this act provided, said board or council shall cause sufficient prints thereof to be made, whereupon the original map or maps so prepared shall be filed with the clerk of said board or council, who shall endorse the date of filing thereon and shall cause prints thereof to be placed on display in each of three public places within said city and shall give public notice thereof by posting in at least three public places in said city and by publication in a newspaper printed and published in said county and of general circulation in said city, at least once a week for four successive weeks. Such notice shall state briefly the filing of said plat or map, the purpose thereof and the places where the same is on display, and shall notify all persons that may be affected thereby to file their written objections or exceptions thereto, if any they have, with said board or council, not more than sixty days from the date of the first publication of said notice and that after the expiration of such period said maps or plats will be filed with the district court for their adoption and approval in accordance with the provisions of this act. The posting shall be made within five days of the first publication. If no newspaper is printed or published within the county, the publication shall be made in a newspaper printed and published in one of the counties nearest thereto. The due publication of said notice shall be shown by the affidavit of the manager or publisher of the newspaper in which the same is published, and the posting of said notice shall be shown by affidavit of the clerk or of the person posting said notices. Said board or council shall also furnish additional blue or blue-line prints of said maps or plats at a reasonable cost to any parties desiring such copies.

Objections to map, how made.

SEC. 5. Objections or exceptions to such maps or plats shall be in writing, under the oath of the objecting or excepting party, and shall be filed with the clerk of said board not later than sixty days after the first publication of said notice and the clerk shall endorse his filing marks thereon. Such objections or exceptions need not be in any precise or particular form, but shall state clearly the nature of the objection or exception and the grounds and facts upon which the same are based, and shall conform so far as may be practicable to pleadings in courts of record. No answer or reply need be made or filed to put such objections or exceptions at issue, but the same shall be considered at issue upon the said map or plat and the said objections or exceptions thereto. Such objections or exceptions shall be entitled: "Before the (or city council, etc., as the case may be) of the city of....., county of....., State of Nevada. In the matter of the adoption of a map or plat of and for the city of..... (or the..... subdivision of, or addition to, such city, as the case may be)."

Legal action in court, when.

SEC. 6. Within thirty days after the expiration of the said sixty days from the date of said first publication, said city council, or other legislative board of said city shall commence an action in the district court of the

State of Nevada, in and for the county in which said city is situate, in which such city shall be the party plaintiff and in which shall be joined as parties defendant, all persons who are by the plaintiff known to have, or appear by the assessor's lists in said county to have any interest, whether legal or equitable and whether in possession or expectancy, in or to any of the blocks, lots, or any other pieces or parcels of property, whose title would be affected by the adoption of said map or maps or plat or plats. Such action shall be commenced by the filing of a complaint, in which the plaintiff shall set forth the making and filing of said map or maps, plat or plats, in accordance with the provisions of this act and the other and further things and notices herein required. Together with said complaint the said plaintiff shall file such map or maps or plat or plats, together with such written objections or exceptions thereto as may have been filed as herein provided and shall pray said court for an order adopting, fixing, and establishing said map or maps or plat or plats, and fixing, settling, establishing, determining, and adjudicating the points, lines, descriptions, metes, bounds, names, numbers, and letters of all blocks, lots, streets, alleys, highways, parks, schools, cemeteries, and other properties devoted to public use and all lines and corners therein shown. At the time of commencing such action the plaintiff shall cause to be filed in the office of the county recorder of the county in which said property is situate, a notice of the pendency of said action, and such notice, when recorded, shall be considered a notice thereof to all persons to the extent and effect now provided in the civil practice act of the State of Nevada. The summons shall be served as provided in sections 80 to 92 of the civil practice act, being sections 5022 to 5034 of the Revised Laws of the State of Nevada, 1912, as amended.

Summons, form of.

SEC. 7. The summons in said action need not contain a description by lot or block numbers or by metes or bounds, but shall refer generally to the purpose of the action and shall contain the name of the city or part or subdivision thereof or addition thereto, to be affected by said action. A copy of said summons shall be posted in three conspicuous places within said city within ten days after the filing of said complaint. After the service of said summons and complaint, as herein provided, and the filing of said notice of the pendency of such action and the posting of summons, as in this section specified, all of the property within such city or part or subdivision thereof or addition thereto, shall, for all of the purposes of said action, be conclusively deemed within the jurisdiction of the said district court in which such action is brought. If the names of the owner or owners of any of the property within said city shall be unknown to the plaintiff, such fact may be recited in the complaint in said action and any and all such owners impleaded under fictitious names, and the complaint may be thereafter amended if the true names of such fictitious defendants or any of them be thereafter ascertained. The judgment and decree in said action shall be binding and conclusive as to all of the property affected, whether the owners, or one or more thereof, of any of the parcels of property within said city be actually named as party or parties defendant or not.

Further pleadings—Civil practice act.

SEC. 8. Further pleadings may be served and filed in said action in all respects as provided in the civil practice act for other actions and the cause shall proceed in all respects in accordance with the regular practice in courts of record in this state. When the cause is at issue upon the plaintiff's complaint and the respective answers of such defendants as shall have appeared in said action, and the reply of plaintiff to any affirmative matters

set up in any one or more of such answers, and when the default of all defendants failing to appear has been entered, the court shall set the matter down for hearing at the earliest practicable date and the hearing thereof shall have precedence over all other matters upon the calendar, except matters of a similar nature and except hearings on temporary or permanent injunctions and except such matters as are given precedence by law.

Civil practice act to govern.

SEC. 9. Findings of fact and conclusions of law and judgment shall be made and entered as in other cases, and exceptions, motions for new trial and appeals may be had as provided in said civil practice act. The court or judge thereof shall in said findings and decree adopt, settle, determine, fix, and establish a definite map or plat of said city or part or subdivision thereof or addition thereto, in accordance with the pleadings and proof, and shall, by reference, make a part of said findings and judgment the said map or plat so adopted, settled, determined, fixed, and established. Whenever blocks or parts of blocks in the original lost, destroyed, conflicting, erroneous, or faulty maps or plats have been insufficiently or incorrectly platted, numbered, or lettered, the omission, insufficiency or fault shall be supplied and corrected in accordance with such pleadings and proof. If the said map or maps or plat or plats prepared by said engineer as hereinbefore provided shall by reason of the said pleadings, proof, findings, and judgment, be inadequate or impracticable of use for said judgment, the said judgment or decree may require the making of a new map or maps or plat or plats, in accordance with the provisions of the findings and judgment. A certified copy of such judgment, together with such map or maps or plat or plats as shall finally be adopted, settled, determined, fixed, and established by the said court, shall be filed in the office of the county recorder of the county in which said action is tried. All the ties and descriptions of section- or quarter-section-corners, monuments, or marks, required by section 2 of this act shall appear on such map finally established by said judgment. The county recorder shall collect his regular fees for the recording of the certified copy of said judgment, and shall collect a fee of \$10 for the filing of the said map or maps or plat or plats.

The said judgment may require that all prior existing maps in conflict with the map or plat adopted, shall be so marked or identified by the county recorder to show the substitution of the new map or plat in place thereof.

Municipal board to begin proceedings.

SEC. 10. The city council, or other legislative board of said city, may cause such action to be commenced and prosecuted by the city attorney of such city or the district attorney of the county in which such city is situate or may retain additional or other counsel for the purpose of said action and may allow a reasonable sum for the compensation of the attorney or attorneys so acting.

Referee or commissioner, when.

SEC. 11. The court or judge trying said cause may refer any questions of fact arising therein to a referee or commissioner for findings and determination, and the findings of such referee or commissioner shall be subject to review by such court or judge. The court or judge before whom said cause is tried shall have full jurisdiction over all questions that may be properly at issue upon the pleadings, including such issues that may arise by reason of any conflict between the lots, blocks, streets, alleys, highways, parks, cemeteries, schools, and other public properties, or the lines or corners thereof, as shown by said map or maps or plat or plats filed with said complaint, and the rights or alleged rights of any one or more of the

owners of any of the property described in said complaint or embraced in said map or maps or plat or plats. In the event that it is necessary, for the purpose of fixing and establishing said map or maps or plat or plats, to devote any pieces or parcels of property owned by any of the defendants within said city, subdivision, or addition, to public uses as streets or alleys, it shall be proper for the court or judge to appoint three appraisers, who shall appraise and assess the value of such property, and the court may condition the approval of such map or plat on the payment or proper tender by plaintiff to such party defendant of such assessed sum. Any two of such three appraisers shall be competent to act, and their appraisalment or assessment shall be subject to review by the court.

Substitution of terms and words.

SEC. 12. This act shall apply to like extent to towns within the State of Nevada, the word "town" being substituted wherever the word "city" appears herein and "the legislative board of said town" (or, in the event that such town have no legislative board, then the "board of county commissioners of the county in which such town is situate") shall be substituted for "city council or other legislative board of said city."

Additional rights and remedies.

SEC. 13. The rights and remedies in this act provided for, shall be in addition to those existing under subsisting acts in regard to the establishing and vacating of town sites or parts thereof or property devoted to public purposes therein.

An Act concerning claims and accounts against incorporated cities.

Approved February 2, 1915, 6

Claims must be presented, when.

SECTION 1. All unaudited claims or accounts against any incorporated city in this state shall be presented to the city council of said city, duly authenticated, within six months from the time such claims or accounts become due or payable; *provided*, nothing contained in this act shall be construed so as to prevent the presentation and auditing of any claim or account now due against any incorporated city in this state, at any time within six months from the passage and approval of this act.

Claims not paid, when.

SEC. 2. No claim or account against any incorporated city in this state shall be audited, allowed, or paid by the city council or any officer or officers of said incorporated city unless the provisions of section 1 of this act shall have been strictly complied with.

Rejected claims not to be reconsidered.

SEC. 3. No claim or account which has once been presented and rejected shall ever again be considered or allowed by the same or any subsequently elected or appointed city council of the same city.

An Act to regulate the construction of weirs in river dams situated within two miles of any incorporated city or town governed by a board of county commissioners within this state, and other matters relating thereto.

Approved March 22, 1913, 262

Weirs must be constructed.

SECTION 1. It shall be the duty of any person, or persons, firm, association, company, or corporation owning, leasing, or constructing any dam

in any river of this state within two miles of an incorporated city or town governed by a board of county commissioners, to make or construct a weir in such dam of such size as to admit of the free passage of the water of such river during such portions of the year as said water is not being used for irrigating purposes.

Penalty for noncompliance.

SEC. 2. If any person, persons, firm, association, company, or corporation mentioned in section 1 of this act shall fail, neglect, or refuse to comply with the provisions of said section 1, it shall be the duty of the district attorney of the county wherein said dam is situated or being constructed, to commence mandamus proceedings to compel such person, persons, firm, association, company, or corporation to comply with the provisions of said section 1, or the board of county commissioners of such county may order said weir to be so constructed at the expense of the county and such county shall have a right of action against the owner or lessee of said dam for all expenses incurred by said county in constructing said weir, and may recover judgment on said right of action and satisfy the same in the manner now provided by law.

Not to apply to permanent dams.

SEC. 3. The provisions of this act shall not apply to dams constructed or being constructed or hereafter to be constructed for the purpose of permanently storing the waters of such river for beneficial purposes.

Terms defined.

SEC. 4. The term "water of such river," as used in this act, shall be construed to mean the normal and natural flow of water in such river unaffected by flood, storm, or other abnormal natural causes.

COMPILATION

An Act to provide for the purchase, publication and sale of a compilation of certain Nevada statutes and digest of Nevada supreme court reports, and making an appropriation therefor.

Approved April 1, 1919, 400

Compilation of statutes and digest.

SECTION 1. The justices of the supreme court of this state are hereby authorized to contract with Edward T. Patrick and George B. Thatcher for the compilation of the statutes of Nevada, other than local statutes, embodied in the session laws of Nevada for the years 1913, 1915, 1917, and 1919, to be fully annotated by reference to all decisions of the supreme court of the State of Nevada and of the federal courts in cases originating in Nevada, construing or referring to any such statute, together with a digest of all decisions of the supreme court of Nevada contained in the Nevada Reports subsequent to volume 32 thereof, at and for a price not exceeding the sum of thirty-five hundred dollars.

What shall embrace.

SEC. 2. Said compilation and digest shall be full and complete, containing all necessary references to the Pacific Reporter, American State Reports, American and English Annotated Cases, Lawyers' Reports Annotated, and all series of selected cases so far as any Nevada decisions appear therein. Said compilation and digest shall also contain a complete table of cases,

reference to all citations of Nevada cases in the Nevada Reports, after volume 30, and full-scope notes, and shall be completed, with proper indexes, to the satisfaction of said justices.

State printer to print.

SEC. 3. Upon the completion and purchase of the manuscript of said compilation and digest, the same shall be deposited with the state printer, who shall, in as expeditious and economical manner as practicable, proceed to print, in good style, and subject to the approval of said justices, upon good book paper, one thousand copies of said compilation and digest, and shall have bound in good workmanlike manner, in law sheep or buckram, three hundred copies thereof; and upon the completion of the printing and binding of said number of copies he shall deliver the same to the secretary of state. The secretary of state, on the approval of the state board of examiners, may order the state printer to bind and deliver to the secretary of state such additional copies of said compilation and digest as may be required.

Price—No free copies.

SEC. 4. The secretary of state shall sell said bound copies to any one applying therefor for the sum of fifteen dollars for each volume; none of said copies shall be distributed free to any public official, or to any library, anything in the laws of Nevada to the contrary notwithstanding. All moneys received by him for the sale of said copies shall be paid into the general fund of the state.

Appropriation.

SEC. 5. The sum of sixty-five hundred dollars is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, for the purpose of purchasing said manuscript and of binding and publishing said compilation and digest as hereinbefore provided.

Board of examiners to audit claims.

SEC. 6. Upon the approval of claims against said fund by the state board of examiners, the state controller is hereby directed to issue his warrants therefor, and the state treasurer is hereby directed to pay the same.

CONVEYANCES

1038. The lessor's assignment of "all rents due and to become due under" a certain lease was not an assignment in itself of the lease, and did not create an estate or interest in the lands within this section and Rev. Laws, 1039, 1069, stating the requisites of an instrument affecting the estate or estates in lands and of recordation in order to constitute notice. *Washoe County Bank v. Campbell*, 41 Nev. 153, 158 (168 P. 643.)

1038-1040. Cited, *Seeley v. Goodwin*, 39 Nev. 320 (156 P. 934).

1039. See *Washoe County Bank v. Campbell*, 41 Nev. 153, 158, under section 1038.

1043. In the absence of direct evidence on the question of mental capacity of the mortgagor owing to intoxication at the time of drawing the mortgage, the fact that the certificate of a notary public showed that the mortgage was acknowledged before him and that he executed it is prima facie evidence of due execution. *Seeley v. Goodwin*, 39 Nev. 315, 325 (156 P. 934).

1045. See *Seeley v. Goodwin*, 39 Nev. 315, under section 1043.

1063. Cited, *Seeley v. Goodwin*, 39 Nev. 320 (156 P. 934.)

1069. An oral agreement to bear one-third of the expenses of developing a mining claim covered by a two-year lease in consideration of an assignment of a one-third interest is not void under the statute of frauds, where the parties contemplate that the development work shall be completed within a year. *Girton v. Daniels*, 35 Nev. 438 (129 P. 555).

An oral agreement to bear one-third of the expenses of developing a mining claim covered by a two-year lease was not void under the statute of frauds, where the lease could have been terminated by the act of the parties within one year according to its specific provisions. *Id.*

1069. An oral agreement between the plaintiff, as part owner of a mining claim, and one defendant, by which the latter was to perform assessment work on the claim for 1909, and plaintiff was to convey to him an undivided one-fourth of the claim, and defendant was also to relocate another claim in the joint names of plaintiff and defendant in consideration of plaintiff's refraining from performing assessment work on the claim, is not void under this section. *Hornsilver Cases*, 35 Nev. 447, 456(130 P. 760, 764; 134 P. 448, 449).

See *Washoe County Bank v. Campbell*, 41 Nev. 153, under section 1038.

1078. An unrecorded bill of sale of undelivered personalty executed by a deceased, is not void as to an order of court setting aside a monthly allowance to wife of deceased, the wife not being a "creditor" within this section. *Guisti v. Guisti*, 41 Nev. 349, 359 (171 P. 161).

Under *Cutting*, 2703 and 2705, similar to this section, and *Rev. Laws*, 1080, it was held that where certain deeds which were in fact mortgages purported to convey chattels as well as real estate, but there was neither delivery of the chattels to the mortgagee nor affidavit as required by section 2705 (*Rev. Laws*, 1080), the deeds, in so far as they were mortgages of the personal property, were void as against the mortgagor's creditors and the trustee in bankruptcy. *Alter v. Clark*, 193 F. 153, 157.

1080. See *Alter v. Clark*, 193 F. 153, under section 1078.

An Act to make uniform the law of acknowledgments to deeds or other instruments taken outside the United States.

Approved March 23, 1917, 274

How acknowledged.

SECTION 1. All deeds or other instruments requiring acknowledgment, if acknowledged without the United States, shall be acknowledged before an ambassador, minister, envoy or charge d'affaires of the United States, in the country to which he is accredited, or before one of the following officers commissioned or credited to act at the place where the acknowledgment is taken, and having an official seal, viz: Any consular officer of the United States; a notary public; or a commissioner or other agent of this state having power to take acknowledgments to deeds.

Form of certificate.

SEC. 2. Every certificate of acknowledgment made without the United States shall contain the name or names of the person or persons making the acknowledgment, the date when and place where made, a statement of the fact that the person or persons making the acknowledgment knew the contents of the instrument and acknowledged the same to be his, her or their act; the certificate shall also contain the name of the person before whom made, his official title, and be sealed with his official seal and may be substantially in the following form:

..... (Name of country).
 (Name of city, province or other political subdivision).
 Before the undersigned, (naming the officer and designating his official title), duly commissioned (or appointed) and qualified, this day personally appeared at place above named (naming the person or persons acknowledging), who declared that he (she

or they) knew the contents of the foregoing instrument, and acknowledged the same to be his (her or their) act.

Witness my hand and official seal this day of, 19.....
 (Name of officer),

(Seal)

..... (Official title).

When the seal affixed shall contain the name or the official style of the officer, any error in stating, or failure to state otherwise the name or the official style of the officer, shall not render the certificate defective.

Present form legal.

SEC. 3. A certificate of acknowledgment of a deed or other instrument acknowledged without the United States before any officer mentioned in section 1 shall also be valid if in the same form as now is or hereafter may be required by law, for an acknowledgment within this state.

An Act making the assignment of wages, salary, or earnings under certain conditions conclusive evidence of fraud.

Approved March 14, 1917, 181

Certain assignments evidence of fraud.

SECTION. 1. Every assignment of wages, salary, or earnings made by any person against whom there is, at the time such assignment is made, an unsatisfied judgment for debt on the records of any court within the county in which such judgment debtor resides, shall be conclusive evidence of fraud, and shall be void as against the judgment creditors of the person making such an assignment.

CORPORATIONS

1107. Articles filed, where.

SEC. 3. All the persons who desire to form a corporation for any or more of the purposes specified in this act shall make, sign and acknowledge before some person competent to take the acknowledgment of deeds, and file and have recorded in a book provided for that purpose, in the office of the secretary of state, articles of incorporation or a certificate of incorporation; and file a copy thereof, certified under the hand and official seal of the secretary of state, in the office of the clerk of the county in which the principal place of business of the company is intended to be located. Said articles or certificate of incorporation shall be as provided in section 4 of this act, and it shall be the duty of the secretary of state to require the same to be in the form so prescribed, and that the name of the proposed corporation distinguishes it from any other corporation at that time organized and existing under and by virtue of the laws of the State of Nevada; and if any such articles or certificates shall be defective in either respect, the secretary of state shall return the same for correction. *As amended, Stats. 1905, 73; 1917, 193.*

1110. Certificate prima facie evidence.

SEC. 6. A copy of any certificate of incorporation or articles of incorporation filed in pursuance of this act, and certified by the secretary of state under his official seal, or a copy of the copy thereof filed with the

county clerk under the county seal, certified by said clerk, shall be received in all courts and places as prima facie evidence of the facts therein stated, and of the existence and due incorporation of said corporation therein named. *As amended, Stats. 1917, 194.*

1123. Repealed, Stats. 1917, 194.

1131. Shares deemed personal estate—How transferred.

SEC. 27. Whenever the capital stock of any corporation is divided into shares, and certificates thereof are issued, the stock of the company shall be deemed personal estate. Such shares may be transferred by endorsement and delivery of the certificate thereof, such endorsement being by the signature of the proprietor, or his or her attorney, appointed by written power, or legal representative duly authorized; but such transfer shall not be valid against such corporation until the same shall have been so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer, and the old certificate surrendered and canceled, which must be done in all cases, except in case of loss or destruction of original, before a new one issue. In all cases in which shares of stock in corporations now existing, or hereafter incorporated under any law of this state, or held or owned by a married woman, such shares may be transferred by her, her agent or attorney, authorized by writing, without the signature of her husband, in the same manner as if such married woman were a single woman. All dividends payable upon any shares of stock of a corporation held by a married woman, may be paid to such married woman, her agent, or attorney, in the same manner as if she were unmarried. And it shall not be necessary for her husband to join in receipt therefor; and any proxy or power given by a married woman, touching any share of stock of any corporation owned by her, shall be valid and be binding without the signature of her husband, the same as if she were unmarried. *As amended, Stats. 1913, 42.*

1171. Procedure when place of business is changed.

SEC. 70. Whenever the principal office of a corporation is changed from one county to another by amendment of its articles of incorporation, or otherwise, and whenever any corporation becomes the owner or lessee of any real property in any county other than that in which it has its principal place of business, or whenever copies of its articles of incorporation and of all amendments thereto are not on file or of record in the office of the county clerk of the county where its principal office is situated, or where it owns, holds, leases, manages or controls any real property, such corporation must file in the office of the county clerk of such county to which its office is changed, or where it owns or holds any real property in this state, a certified copy of its original articles of incorporation and of each amendment thereto, or a certified copy of the copy thereof filed with the county clerk of the county where it has its principal place of business; and no corporation shall maintain or defend any suit in such county until this is done; and if any corporation fails to cause said papers to be so filed any person desiring for a lawful purpose to examine the same may procure and file in such county clerk's office said papers or any of them not then filed, and may recover the expense thereof with the costs of suit in an action against such delinquent corporation. *As amended, Stats. 1917, 194.*

1174. Indictment charging the president of an insurance corporation with obtaining money by selling stock under false pretenses stated a felony under Rev. Laws, 6704, defining crime of obtaining money under false pretenses, and not a misdemeanor under this

section, the fact that the accused received the money as president being immaterial. In *Re Crane*, 40 Nev. 338, 341, 342 (163 P. 246).

This section does not affect the crime of obtaining money under false pretenses defined by Rev. Laws, 6704. *Id.*

1186. Must file list, when.

SEC. 85. Every corporation incorporated or authorized to transact business in this state shall, within thirty days after its organization and election of directors and officers and within thirty days after every change of its directors or officers or resident agent or location of its principal office in this state, file in the office of secretary of state a certificate of the president and secretary under the seal of the corporation, giving the names of all the directors or trustees and officers, with the date of election or appointment of each, term of office, residence and postoffice address of each, character of his business or occupation, location (giving also street and number if practical) of its principal office in this state, and the name of the resident agent in this state in charge of said office and upon whom process can be served. Foreign corporations shall file said authenticated statement at time of filing certified copy of articles of incorporation with the secretary of state. Every corporation failing to comply with this section shall be liable to a penalty of \$100 to the State of Nevada to be collected by the secretary of state and no such corporation failing to comply with this section shall maintain any action in the courts of this state while so in default. *As amended, Stats. 1919, 25.*

1188. Concerning service of process.

SEC. 87. Service of legal process upon any corporation created under this act or subject to its provisions shall be made by delivering a copy thereof personally to the president, cashier, secretary or resident agent of such corporation, or by leaving the same at the principal office or place of business of the corporation in this state. Service by copy left at the said principal office or place of business in this state, to be effective, must be delivered thereat at least thirty days before the return of the process, and in the presence of an adult person; and the officer serving the process shall distinctly state the manner of service in his return thereto, naming such person; *provided*, that process returnable forthwith must be served personally; *and provided further*, when for any reason service cannot be had in the manner hereinbefore provided, then service may be made by delivering a copy to the secretary of state at least thirty days before the return of process and by posting a copy of such process in the office of the clerk of the court in which such action is brought or pending, at least thirty days before the return of such process. *As amended, Stats. 1913, 65.*

1190. How dissolved.

SEC. 89. A corporation may be dissolved as follows:

a. The board of directors shall adopt a resolution that such corporation be dissolved, and shall submit such resolution for the approval or rejection of the stockholders at their next regular annual meeting, or at a special meeting called for that purpose in accordance with the by-laws of the company. Such meeting may, by the consent of a majority in interest of the stockholders present, and without notice, be adjourned from time to time. If at any such meeting, or at any adjournment thereof, two-thirds in interest of all the stockholders and two-thirds in interest of any class of creditors entitled to vote at such meeting shall vote their approval of such resolution and dissolution, the president and secretary shall file with the secretary of state their certificate under oath setting forth such resolution, its adoption by the directors and the date thereof, the date of the stockholders' meeting at which such resolution was voted on, that such meeting

was called and held in accordance with the by-laws of said company, the total number of shares of such corporation outstanding at the date of such meeting, the total number of shares voted, the number of shares voted in favor of the approval of such resolution and the dissolution of said company, the number of shares voted in favor of the rejection of such resolution, and the vote cast for and against the adoption of such resolution by any class of creditors entitled to vote.

b. If nine-tenths in interest of all the stockholders and nine-tenths in interest of any class of creditors entitled to vote shall file with the secretary of any corporation their consent in writing to the dissolution of such corporation, the president and secretary shall file with the secretary of state their certificate under oath stating such facts.

Upon the filing with the secretary of state of either of the certificates above mentioned, and upon payment of the fees therefor required by law, the said corporation shall be and shall stand dissolved, and the secretary of state shall make an endorsement showing such dissolution and the date thereof upon the original articles of incorporation of such corporation, and all amendments thereof, on file in his office. *As amended, Stats. 1917, 195.*

Not to affect.

SEC. 5. This act shall not affect the validity of the organization of any corporation heretofore organized under and according to the laws of this state. *Added, Stats. 1917, 195.*

1195. Cited, *State ex rel. Howell v. Wildes*, 34 Nev. 122 (116 P. 595).

1196. Cited, *Martin & Co. v. Kirby*, 34 Nev. 208 (117 P. 2).

1197. Concerning duties of receiver.

SEC. 96. Said court may in its discretion, in lieu of decreeing the dissolution of such corporation, order the receiver to sell its property and franchise and the purchaser thereof shall succeed to all the rights and privileges of said corporation and may reorganize the same under the direction of said court or pursuant to sections 49 and 50 of this act. At any sale of such property at public auction the court may in its discretion authorize the receiver to accept in payment duly allowed claims against such corporation at a proper valuation; *provided, however*, any corporation created under this act or subject to its provisions, may sell and convey all its property and assets upon a vote of not less than sixty per cent of the outstanding stock of such corporation at a meeting of the stockholders, called for that purpose, notice of such meeting having been previously given by mail to each stockholder of record, at least fifteen days before the date of such meeting; *and provided further*, any corporation may in its articles of incorporation or by an amendment thereto provide for a greater amount than seventy-five per cent of the outstanding stock to authorize a sale and conveyance of the property and assets of such corporation. *As amended, Stats. 1913, 65.*

1203. Fees of secretary of state.

SEC. 102. On filing any certificate or articles or other paper relative to corporations in the office of the secretary of state, the following fees and taxes shall be paid to the secretary of state, for the use of the state: For certificate or articles of incorporation, ten (10) cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five (\$25) dollars; consolidation and merger of corporations, ten (10) cents for each thousand dollars of capital authorized, beyond the total authorized capital of the corporations merged or consolidated, but in no case less than ten dollars; increase of capital stock, ten (10) cents for

each thousand dollars of the total increase authorized, but in no case less than ten dollars; extension or renewal of corporate existence of any corporation, one-half that required for the original certificate or articles of incorporation by this act; dissolution of corporation, change of nature of business, amended articles or certificate of incorporation or organization (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value of or number of shares, ten dollars; for filing list of officers and directors or trustees, and name of agent in charge of principal office, one dollar; notice of removal of principal place of business, other than by amendment, one dollar; for comparing any document to be certified when copy thereof is furnished, if any corrections are required to be made therein before certifying thereto, twenty (20) cents for each folio of one hundred words of said document so compared; for certifying to copy of articles of incorporation, where copy is furnished, five dollars; for certifying to copy of amendment to articles of incorporation, where copy is furnished, five dollars; for certifying to authorized printed copy of the general corporation law, as compiled by the secretary of state, five dollars; for all certificates not hereby provided for, five dollars; *provided*, that no fees shall be required to be paid by any religious or charitable society or educational association having no capital stock; *and, provided further*, that foreign corporations shall pay the same fees to the secretary of state as are required to be paid by corporations organized under the laws of this state, except, that, where a foreign corporation is organized without fixing or stating a par value to its authorized capital stock, or, where its articles or charter, or the legislative, executive, or other governmental acts or other instrument of authority, under which it was created, required by law to be filed in the office of the secretary of state, do not fix or state any par value to its authorized capital stock, then, for the purpose of taxes and fees to be paid to the secretary of state, upon qualifying before carrying on business in this state, but for no other purpose, the authorized capital stock of such foreign corporation shall be taken to be of the par value of one hundred dollars per share. *As amended, Stats. 1913, 58; 1919, 21.*

1207. Where a Maryland fidelity and guaranty company has secured a license to do business in Nevada, its right to foreclose a mortgage, taken to indemnify it for loss incurred as surety on an appeal bond, will not be denied because such corporation has failed to pay a gross earnings tax imposed on foreign insurance companies doing business in Maryland, and which tax might be enforced in Nevada under this section; the Maryland statutes containing no provision that the failure to pay the tax shall result in any forfeiture of the corporation's property rights, the only penalty imposed being a fine. *U. S. Fidelity and Guaranty Company v. Marks, 37 Nev. 306, 310 (142 P. 524).*

1207. Repealed, Stats. 1913, 59; 1919, 22.

1267. Requirement as to directors and capital.

SEC. 2. Corporations may be formed under the general laws of this state for the transaction of insurance business, but no such corporation shall be permitted to assume any risk as insurer unless the same shall have at least five directors, who shall be residents and property owners in this state and stockholders in the corporation; nor until such corporation shall have a paid-up, unimpaired cash capital equal to one hundred thousand dollars, in United States gold coin, which shall be invested in this state, in state or United States bonds, bonds and mortgages on first-class, otherwise unincumbered real estate, the market value of which shall be at least double the amount invested in or loaned thereon, bonds of any school district, city

or county in this state, the issuance of which was duly authorized by law, bonds of any railroad, wagon-road, ditch, or canal incorporation or association; *provided*, that for one year after the granting of the license hereinafter provided for, to any insurance company formed under the laws of this state, such cash capital of one hundred thousand dollars may consist of twenty-five thousand dollars in cash, and seventy-five thousand dollars in negotiable promissory notes, payable to it, approved by the state bank examiner and state controller, and bearing interest at the rate of at least six per cent per annum, and payable within one year after the granting of such license; *provided*, that such bonds or securities shall at no time be estimated as assets of such corporation at more than their actual cash value, and nothing in this act shall be construed to permit any investment in mining stock. Any corporation formed under the laws of this state for the transaction of insurance business may change its name, increase its capital stock, change the location of its principal office, extend its corporate existence, change the number of its directors or trustees, and make such other amendments, changes or alterations as may be desired, in the manner provided by section 40 of an act entitled "An act providing a general corporation law," approved March 16, 1903, or in the manner provided under the laws of this state relating to corporations; *provided*, that nothing herein contained shall be so construed as to authorize or permit any corporation formed under the provisions of this act to decrease its capital stock to less than one hundred thousand dollars. *As amended, Stats. 1913, 11; 1917, 452.*

1268. Restriction of loans.

SEC. 3. No loans shall be made to any stockholder upon the security of the capital stock of such insurance company, and no loans shall be made to any director, officer or employee of such insurance company unless he gives good and sufficient security for the repayment of such loan, which security must be approved by a majority vote of the board of directors and the state bank examiner, the applicant for such loan not voting. *As amended, Stats. 1917, 453.*

1269. Discrimination prohibited.

SEC. 4. No association, firm or individual, whose principal office shall be in this state, shall be permitted to transact business as insurer on terms more favorable than are defined in section two of this act. *As amended, Stats. 1913, 243; 1917, 453.*

1270. Controller to examine accounts, when.

SEC. 5. The controller of state is hereby authorized and required, upon the receipt of a written request, signed by three citizens of this state, or whenever, from any cause, he shall deem it necessary, to make a thorough examination of the books, accounts, securities, and all property belonging to any company incorporated under the laws of this state, and if he does not find capital, or capital and surplus, paid up to the amount of one hundred thousand dollars, or if he shall find the capital, or capital and surplus, impaired below that amount, he shall give notice to such company to immediately repair its capital, and shall refuse or revoke his certificate of authority to such company to do business in this state; and if any company shall refuse to permit such examination, the controller shall refuse or revoke his certificate of authority to such company. If after such notice, refusal or revocation of his certificate by the controller, such company shall continue to make contracts and issue policies, the officers, or any officer, agent or other person so violating the provisions of this act, shall be deemed

guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of five hundred dollars for each offense committed after the receipt of such notice, and in default of payment of such fine shall be imprisoned in the county jail of the county in which the offense was committed for a period not exceeding six months, or until such fine shall be paid. *As amended, Stats. 1913, 243.*

1273. Cited, *King Tonopah Mining Co. v. Lynch*, 232 F. 493, 494.

1304. Resident agents required.

SECTION 1. It shall be unlawful for any insurance company admitted to do business in this state to write, place, or cause to be written or placed, any policy of insurance covering property located in this state except through or by a duly authorized licensed agent of such company, residing and doing business in this state; *provided*, that where the insured calls at the principal office of the company and requests a policy, the risk may be covered, and the policy procured through the duly authorized agent in the territory wherein the risk is located; *and provided further*, that a nonresident special agent, representing a company licensed by this state, may work with and assist local agents in this state in writing business, but in all cases the local agent is to retain his full commission; *provided*, that nothing in this act shall be considered as prohibiting duly licensed resident agents from exchanging with each other, any lines of insurance business for which such agent is licensed, and paying or dividing commissions on business so exchanged. The license of any insurance company or agent, who violates the provisions of this section, shall be revoked and no license shall be issued to such company or agent for one year from the date of the revocation of the license; *provided*, that this section shall not apply to direct insurance covering rolling stock of railroad corporations, or property in transit, while in the possession and custody of railroad corporations or other common carriers. *As amended, Stats. 1919, 392.*

Company must file rates.

SECTION 1A. Every fire insurance company, before it shall receive a license or a renewal of a license to transact the business of making insurance as an insurer in this state, must file or cause to be filed in the office of the insurance commissioner its special, specific and tariff rates. Every such company and its agents shall observe its rates so filed, and shall not deviate therefrom when making insurance until amended or corrected rates shall have been filed in the office of the insurance commissioner. Any fire insurance company knowingly failing to observe and follow its said rate may be precluded from transacting any business in this state for a period of one year by the revocation of its license by the insurance commissioner; *provided*, that any insurance company charged with a violation of this section shall, before any fine is imposed or its license revoked, be notified in writing by the insurance commissioner of the charges in detail preferred against it, and said notice shall provide a reasonable time, not less than five nor more than twenty days, within which such company may appear before the insurance commissioner and present evidence and be heard in its own behalf; *provided further*, that such company may appeal to a court of competent jurisdiction from the order of the insurance commissioner revoking its license, and pending the determination of such appeal such revocation shall be suspended. *Added, Stats. 1919, 392.*

1330-40. Repealed, Stats. 1915, 68.

1348. See *Scott v. Day-Bristol M. Co.*, 37 Nev. 299, under section 1350.

1349. See *Scott v. Day-Bristol M. Co.*, 37 Nev. 299, under section 1350.

1350. Under this section, it was held, that, where plaintiff instituted suit against a foreign corporation which had not complied with this section, seeking a decree depriving defendant of title to a mining claim which it claimed to own within the state, plaintiff was estopped to deny defendant's right to make a defense and have the answer of defendant stricken and judgment rendered by default. *Scott v. Day-Bristol M. Co.*, 37 Nev. 299, 301, 302 (142 P. 625).

1351. To publish annual statements.

SECTION 1. All foreign corporations doing business in the State of Nevada shall, not later than the month of March in each year, beginning in the year 1914, publish a statement of their last year's business in some newspaper published in the State of Nevada. If published in a daily newspaper, such statement shall be published for a period of one week, or if published in a semiweekly or triweekly newspaper, for a period of two weeks; or if published in a weekly newspaper, for a period of four weeks. *As amended, Stats. 1913, 270.*

An Act relating to the office of the ex officio state insurance commissioner, and extending and further defining his powers and duties; requiring further licenses in connection therewith, other matters relating thereto, repealing acts and parts of acts inconsistent herewith, and providing penalties for the violation hereof.

Approved March 12, 1915, 117

State controller ex officio commissioner.

SECTION 1. The state controller of Nevada, acting as ex officio insurance commissioner, is hereby empowered to enforce all insurance laws at present on the statute books, and is additionally empowered as follows:

License from solicitors.

SEC. 2. It shall be his duty to issue a license to all authorized insurance solicitors upon a written request from the general agents or other responsible officers of such companies as shall have complied with the requirements of the insurance laws of Nevada, said license being good until February 1 of the succeeding year, unless revoked by the insurance commissioner; and any person soliciting insurance in the state, or taking it on behalf of any company without such license, or writing it for any company not authorized to do business in this state, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of \$100, or imprisoned fifty days in the county jail, or both, and be debarred from transacting any more insurance business in the state.

Fee for license.

SEC. 3. The fee for such license shall be one dollar for each company represented.

Licenses suspended, when.

SEC. 4. The state controller, acting as ex officio insurance commissioner, shall have the power to revoke or suspend the license of any insurance company that refuses, neglects or fails to settle any valid claim against it within sixty days after final judgment shall have been entered thereon and notice thereof filed with said state controller.

Commissioner to place state insurance.

SEC. 5. The state controller, acting as ex officio insurance commissioner, shall place all fire insurance required by the State of Nevada upon its property, dealing only with companies authorized to do business in the

state; and shall also have the power to inspect all state buildings and order such fire-extinguishing and safety appliances as shall be deemed necessary for the protection of property against fire; and shall have the further power to order the removal of combustibles and rubbish from said property, or order such changes in the entrances or exits of the buildings as shall insure the safety of the inmates, together with such fire escapes as he may deem necessary.

Further powers of commissioner.

SEC. 6. Should the commissioners or board in charge of such state property refuse to comply with the order of the state insurance commissioner within thirty days after such order reaches them, the insurance commissioner shall have the power to order the required work done and the required fire-extinguishing and safety appliances installed at the expense of the commission or board having charge of said property, and payment for the same shall be a valid claim against the state.

To make fire survey.

SEC. 7. When twenty-five per cent of the taxpayers of any city or town in the state desire a survey of the water-works and fire appliances of the town or city, with a view of asking for a reduction of fire insurance rates, the insurance commissioner shall depute some suitable person to make such survey and file a full report in his office, said report to be placed with the San Francisco board of underwriters, before which board the state insurance commissioner or deputy shall appear to argue a reduction of insurance rates, should said report warrant it. All the expense of such proceeding shall be borne by the town or city upon whose behalf the proceedings are had, and shall be deposited with the insurance commissioner before action is taken. The compensation allowed such deputy while actually in the employ of the state shall be five dollars per diem and actual expenses while traveling.

To examine condition of insurance company.

SEC. 8. The insurance commissioner shall have the right to make an examination of the condition of any insurance company doing business in the state, either upon his own volition or the sworn statement alleging irregularity or insolvency of the company from five bona-fide policy holders, stockholders, or creditors thereof, and may withdraw or withhold his certificate of authority to do business in this state, pending or subsequent to such an investigation.

General insurance fund.

SEC. 9. The state insurance commissioner is hereby empowered to direct all insurance transactions between the state and the insurance companies, and all the moneys collected for licenses, penalties, or other moneys paid by the insurance companies or solicitors to the state to enable them to transact business in the state shall be paid into the state treasury, there to be set aside in the fund to be known as the general insurance fund, and from which all claims in behalf of the insurance commissioner shall be paid after being duly passed upon and approved by the state board of examiners; *provided, however,* that on January 1 of each year any balance exceeding five thousand dollars in such fund shall be transferred to the general fund of the state.

Attorney-general to prosecute.

SEC. 10. Where it shall become necessary for the state to sue a delinquent insurance company for moneys due the state, the attorney-general

shall conduct the proceedings, and where it becomes necessary to employ additional counsel in the city where the home office of the defendant corporation is located, compensation for such services shall be subject to the approval of the state board of examiners.

Special deputy to examine nonresident companies.

SEC. 11. The insurance commissioner may appoint as deputy any competent person to make an examination of a nonresident insurance corporation, and the expenses of said examination shall be wholly borne by the company examined, but shall in no case be higher than the compensation allowed by the local laws of the state for such services where such examination is made.

An Act to provide for the creation of corporations sole, and defining the powers thereof, and other matters relating to such corporations.

Approved March 2, 1915, 72

Who may become corporations.

SECTION 1. Corporations may be formed for acquiring, holding, or disposing of church or religious society property, for the benefit of religion, for works of charity, and for public worship, in the manner hereinafter provided in this chapter.

Articles, how made.

SEC. 2. Any person being the archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman, of any church or religious society or denomination, who may have been duly chosen, elected, or appointed, in conformity with the constitution, canons, rites, regulations, or discipline of said church or religious society, and in whom shall be vested the legal title to property held for the purposes, use, or benefit of such church or religious society, may make and subscribe written articles of incorporation, in duplicate, acknowledge the same before some officer authorized to take acknowledgment, and file one of such articles in the office of the secretary of state, and retain possession of the other.

What articles must specify.

SEC. 3. The articles of incorporation shall specify:

1. The name of the corporation by which it shall be known;
2. The object of said corporation;
3. The estimated value of the property at the time of making the articles of incorporation;
4. The title of the person making such articles, and the manner in which any such vacancy occurring in the incumbency of such archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman is required by the rules, regulations, or discipline of such church, society, or denomination to be filled. *As amended, Stats. 1917, 22.*

Officer may be corporation sole.

SEC. 4. Upon making and filing for record articles of incorporation as herein provided, the person subscribing the same, and his successor in office by the name or title specified in the articles, shall thereafter be deemed, and is hereby created, a body politic and a corporation sole, with continual perpetual succession, and such corporation shall have power to acquire and possess, by donation, gift, bequest, devise, or purchase, and to hold and maintain property, real, personal, and mixed, and to grant, sell,

convey, rent, or otherwise dispose of the same as may be necessary to carry on or promote the objects of the corporation; and shall have authority to borrow money and to give promissory notes or other written obligations therefor, and to secure the payment thereof by mortgage or other lien, upon real or personal property.

Power of corporation.

SEC. 5. Such corporation shall have the power to contract and be contracted with, in the same manner as a natural person, and to sue and be sued, plead and be pleaded in all courts of justice, and to have and use a common seal by which all deeds and acts of such corporation may be authenticated.

Instruments, how made.

SEC. 6. All deeds and other instruments of writing shall be made in the name of the corporation and signed by the person representing the corporation, and be sealed with the seal of the corporation, an impression of which seal shall be filed in the office of the secretary of state.

Articles filed, where.

SEC. 7. The articles of incorporation, or a certified copy of those filed and recorded in the office of the secretary of state, shall be evidence of the existence of such corporation.

Succession established.

SEC. 8. In the event of the death or resignation of any such archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman, or of his removal from such office by the person or body having the authority to remove him when such person is at the time a corporation sole, his successor in office, as such corporation sole, shall be vested with the title to any and all property held by his predecessor, as such corporation sole, with like power and authority over the same, and subject to all the legal liabilities and obligations with reference thereto. Such successor shall file in the office of the county recorder of each county wherein any of said real property is situated, a certified copy of his commission, certificate, or letter of election or appointment.

An Act authorizing the incorporation of the assets of insolvent banks and providing for the distribution of the stock of such corporation to the creditors and depositors of such banks.

Approved March 24, 1917, 392

To incorporate—Directors.

SECTION 1. Whenever any bank shall be placed in the hands of a receiver by any court under and by virtue of the laws of this state the court, if it shall appear that such bank is insolvent and from an appraisal of its assets that it will be unable to pay more than seventy cents on the dollar to its depositors and creditors in court shall, upon the application of the attorney-general, direct that a corporation be formed with a capital stock equivalent to the aggregate amount due to the depositors and creditors of the bank, and order the receiver to sell and convey, transfer, sign and set over all property, real and personal, and all stocks, bonds, notes and causes of action to such corporation so formed, and the court shall order a distribution of the stock of such corporation prorated to the creditors and depositors of such bank. Such corporation shall be formed under the general corporation act of this state, but no fees shall be required to be paid to the secretary of state or to the county clerks under which the

articles may be filed. The court shall appoint three persons to sign and acknowledge the articles of incorporation and upon the due and regular filing thereof shall appoint five directors who shall serve for three months from the date of their appointment or until their successors are elected and qualified as hereinafter provided. It shall be the duty of the attorney-general to prepare the articles of incorporation of such corporation and attend and assist in the formation of such corporation and the transfer of the assets in the hands of the receiver or belonging to such insolvent bank to the corporation so formed.

Duties of directors—Officers.

SEC. 2. It shall be the duty of the directors appointed by the court to immediately elect a president, vice-president and secretary, and it shall be the duty of such directors to immediately call a meeting of all stockholders of such corporation for the purpose of electing officers and adopting by-laws, such meeting to be held within three months from the date of incorporation and at such time and place as may be fixed by the court. For the purpose of this act every depositor or creditor of any insolvent bank in the hands of a receiver shall be considered a stockholder of the corporation so formed, and shall be entitled to one vote for each share of stock held by him or to which he may be entitled on the day of election. Every depositor or creditor shall be entitled to one share of stock for each dollar due him from such insolvent bank. At the meeting of the stockholders held pursuant to order of the court as heretofore provided, there shall be elected by them a board of five directors and they shall adopt by-laws for the corporation and transact such other business as may be proper at an annual meeting of a corporation under the laws of Nevada. The directors shall immediately following their election elect their officers and thereafter the corporation shall be conducted in accordance with the by-laws and the laws of the State of Nevada governing corporations.

Banking business prohibited.

SEC. 3. Nothing herein contained shall be construed as permitting the transaction of a banking business by any corporation formed hereunder.

1356-60. Repealed, Stats. 1915, 344. Replaced by following act (Stats. 1915, 341).

An Act providing for the incorporation of domestic building and loan associations, the licensing of foreign building and loan associations, the examination and regulation of all building and loan associations doing business in this state by the state bank examiner, and other matters properly connected therewith, and repealing a certain act.

Approved March 24, 1915, 341

Bank examiner to supervise.

SECTION 1. Building and loan associations organized for the purpose of raising a fund by the collection of dues or stated payments from their members to be loaned among their members may be incorporated under the provisions of the general corporation law of this state; *provided, however*, that the secretary of state shall not issue a certificate of incorporation to any such association, authorizing it to do business in this state, until the articles of association or agreement shall have been approved by the state bank examiner; and all the rights, privileges, and powers, and all the duties and obligations of such corporations, and the officers and stockholder thereof, shall be as provided in said general corporation act, except as in this act otherwise provided. In addition to the other facts required

to be stated, the articles of incorporation of such companies shall state the terms and plans of becoming and continuing a member, and of withdrawal, the plans of making loans, distributing profits, equalizing losses, providing for expenses, and of providing a fund with which to pay losses, and the maximum compensation of officers.

Capital, what deemed.

SEC. 2. The capital named in the articles of incorporation shall be taken to mean the authorized capital, and the association may commence business when five per cent thereof is subscribed and the other requirements of this act have been complied with.

Powers of such corporations.

SEC. 3. Any such corporation shall have power, subject to the terms and conditions contained in the articles of incorporation and by-laws, to issue stock to its members; to assess and collect from its members reasonable membership fees, dues, premiums, and fines; to permit its members to withdraw any and all of their stock deposits upon equitable terms; to hold and convey such real and personal property as shall be necessary for its accommodation and the transaction of its business, such as shall be mortgaged in good faith by way of security for debts duly contracted, such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings, such as it shall purchase at sales under judgments, decrees, or mortgages held by it, or shall purchase to secure debts due to it; to make loans to its members on ample real estate security, unincumbered except by prior loans from the association, or upon the stock of such association to the extent of its withdrawal value; to make annual or semiannual distribution of its earnings; and to do all other things that may be necessary to effect its purposes and conduct its authorized business.

Officers to give bonds.

SEC. 4. The treasurer and secretary, before entering upon their duties shall give good and sufficient bonds for the faithful performance of the same and for the safe-keeping and proper application of all money or property coming into their hands, and the same shall be approved by the board of directors. All such bonds shall be increased or additional surety required by the board of directors when the same becomes necessary to protect the interests of the association or its members, but no directors shall be accepted as a surety on such bonds, and the directors shall be individually liable for loss to the association or members caused by their failure to comply with the provisions of this section.

Repayment of loans.

SEC. 5. A borrower may repay a loan at any time upon duly complying with the provisions of the charter and by-laws in relation to the payment of loans; and any stockholder wishing to withdraw from the corporation shall have power to do so by giving thirty days' notice of his intention to withdraw, when he shall be entitled to receive the amount paid in by him and such interest thereon, or such proportion of the profits thereon, less all fines and other charges, as the by-laws may determine; *provided*, that at no time shall more than one-half of the funds of the treasury of the corporation be applicable to the demands of withdrawing stockholders without the consent of the board of directors, and that no stockholder shall be entitled to withdraw whose stock is held by the association for security. Upon the death of a stockholder, his legal representatives shall be entitled to receive the full amount paid in by him on all shares not borrowed upon or pledged to the association as collateral security and legal interest

thereon after deducting all charges that may be due on the stock; but no fines shall be charged to a deceased member's account from and after his decease, unless the legal representative of such decedent assume the future payment of the dues.

To file sworn statement.

SEC. 6. It shall be unlawful for any building and loan association, not organized under the laws of this state, to transact business in this state unless such association or company shall have first complied with the statutes of this state relating to foreign corporations, and shall have submitted a statement of its condition and affairs, subscribed and sworn to by the manager or an officer of the company, showing:

1. The amount of authorized capital, and the par value of each share;
2. The number of shares sold during the year;
3. The number of shares canceled and withdrawn during the preceding year;
4. A statement of receipts and disbursements during the preceding year;
5. Salaries paid each of its officers;
6. A statement of its assets and liabilities at the end of the year, and the nature thereof in general terms;
7. Any other fact which the bank examiner may require.

Any building and loan association not organized under the laws of this state which sells stock or certificates, bonds, debentures, contracts, or other securities within this state, or receives from persons residing within this state payments upon stock, certificates or other securities heretofore sold, shall be construed as doing business within this state and shall come under the provisions of this act.

Upon receipt of all such instruments as are required, and the filing thereof, the secretary of state, upon the recommendation of the state bank examiner, shall issue a certificate authorizing such corporation to do business in this state. *As amended, Stats. 1919, 393.*

Statement filed, when.

SEC. 7. On or before the first day of March of each year, every building and loan association doing business within this state, whether domestic or foreign, shall cause to be filed in the office of the state bank examiner a statement of its affairs as is required in the next preceding section, and shall cause a copy thereof duly certified by the state bank examiner to be published at least four times in some newspaper in this state and having a general circulation therein, such publication to be completed on or before the first day of May and proof thereof filed in the office of the state bank examiner.

Refusal of examination, attorney-general to act.

SEC. 8. If any domestic building and loan association shall refuse to submit to an examination by the state bank examiner, he shall advise the attorney-general thereof, who shall proceed to wind up its affairs; and if any foreign association shall refuse to submit to such examination, the bank examiner shall so advise the attorney-general who shall then proceed by quo warranto to prohibit any such corporation so refusing from continuing to do business in this state.

Illegal acts forfeit right to do business.

SEC. 9. When, in the opinion of the state bank examiner, any such corporation is conducting its business illegally, or in violation of its articles of incorporation or by-laws, or is practicing deception upon its members or the public, or is pursuing a plan that is injurious to the interests of such

members, or if he is satisfied that its affairs are in an unsafe condition, he shall notify the directors or managers, and if it shall not immediately amend its course, or put its affairs upon a safe basis, he shall, in the case of a domestic corporation, advise the attorney-general thereof, who shall take the necessary steps to wind up its affairs; and in the case of a foreign corporation he shall also advise the attorney-general, who shall thereupon proceed by quo warranto to prohibit any such corporation from continuing to do business in this state.

Must immediately file statements.

SEC. 10. Within sixty days after the taking effect hereof each building and loan association doing business in this state shall file with the state bank examiner the statement hereinbefore required, and each such foreign association shall file a copy of its articles and by-laws with the secretary of state and shall obtain its certificate of authority, or on failure or refusal to do so, shall forfeit its right to do business in this state.

Officers liable for illegal acts.

SEC. 11. Any officer or agent of any building and loan association who shall do or attempt to do any business for any such association which does not hold a certificate of authority therefor, as in this chapter provided, or which shall fail or refuse to file with the state bank examiner the annual statement herein required, shall be guilty of a misdemeanor for each and every such offense, and shall be personally liable on any and all contracts made in this state by him for and in behalf of such company during the time it shall remain so in default.

Annual license.

SEC. 12. All foreign building and loan associations doing business in this state shall, on or before the first day of March of each year, pay into the office of the state controller an annual license of one hundred dollars (\$100).

Disposition of license money.

SEC. 13. All moneys received from such annual licenses by the state controller shall be paid into the state treasury to constitute a fund to be used by the state bank examiner to defray the expenses of examination of building and loan associations.

Previous act repealed.

SEC. 14. An act entitled "An act for the regulation of foreign building and loan societies doing business in the State of Nevada," approved March 13, 1905, is hereby repealed.

1361. Investment companies must deposit securities.

SECTION 1. From and after the passage of this act no joint-stock company, association, or corporation, heretofore or hereafter organized under the laws of any other state, territory, or foreign country, for the purpose of engaging in a building and loan business, or dealing in investment certificates, except a banking business, shall be allowed to continue or do business, without having first deposited with the state treasurer the sum of ten thousand dollars in money, or United States bonds, or municipal bonds of this state, or in first mortgages upon real estate located within this state, and, in addition thereto, when the amount due upon investment certificates issued to residents of this state shall exceed one hundred thousand dollars, an additional deposit equal to ten per cent of such excess over one hundred thousand dollars so issued; such security so deposited to be approved by the state treasurer as a guaranty fund for the protection and indemnity of

residents of the State of Nevada, with whom such companies, associations, or corporations shall do business. The funds or securities so deposited shall be subject to attachment, garnishment, levy, and sale upon execution, as in other cases under the laws of this state. *As amended, Stats. 1915, 65.*

1426. Vestrymen, how elected—Women eligible.

SEC. 2. It shall be lawful for all persons, over the age of eighteen years, of any church or congregation in communion with the Protestant Episcopal church, in this territory, who shall have belonged to such church or congregation for the last six months preceding such election, and who shall have been baptized in the Episcopal church, or who shall have been received therein, either by the rite of confirmation, or by receiving the holy communion, or by purchasing or hiring a pew or seat in said church, or by some joint act of the parties and of the rector whereby they shall have attached themselves to the Protestant Episcopal church, and who are not already incorporated, at any time to meet for the purpose of incorporating themselves under this act, and by a majority of voices, to elect two church wardens, and not less than three nor more than twelve vestrymen, and to determine upon what day of the week called Easter week the said officers, called church wardens and vestrymen, shall annually thereafter cease, and their successors in office be chosen; of which first election notice shall be given, in the time of morning service, on two Sundays previous thereto, by the rector; or if there be none, or he be necessarily absent, then by any other person belonging to such church or congregation, and the said rector, or if there be none, or he be necessarily absent, then any other person called to the chair shall preside at such first election, and, together with two other persons duly selected, shall make a certificate, under their hands and seals, of the church wardens and vestrymen so elected, of the day of Easter week so fixed upon for the annual election of their successors, and of the name or title by which such church or congregation shall be known in law; which certificate being duly acknowledged and proved by one or more of the subscribing witnesses, before the judge of any court of competent jurisdiction in the county where such church or place of worship of such congregation shall be situated, shall be recorded in the office of the recorder of such county. Nothing in this act shall be held to exclude women, qualified as aforesaid, from serving as members of the vestry; *provided*, that not more than one-half of the membership of the vestry may be women. *As amended, Stats. 1915, 34.*

1433. Vestrymen—Date of election.

SEC. 10. Whenever it is provided in any canon, by-law, or statute of the missionary district of Nevada (or diocese of Nevada, if said missionary district shall become a diocese) of said Protestant Episcopal church that the annual meeting for the election of the members of the vestry or governing body of any church or religious congregation incorporated under this act shall be held at a time other than that specified in the certificate of incorporation of such church or congregation, any election of the members of said vestry held at the time specified in such canon, by-law, or statute shall be valid, and the church wardens and vestrymen chosen at any said election shall hold their offices until the expiration of the year for which they shall be elected or chosen, and until others shall be elected in their stead. *Added, Stats. 1919, 124.*

COUNTIES

Douglas County

1442. Special acts concerning this county only have been passed as follows:

- Fixing compensation of certain township officers of East Fork township, 1915, 128;
- Fixing salaries and compensation of certain county officers, 1915, 128;
- To remove county-seat, 1915, 154;
- To authorize and direct commissioners to erect and construct a courthouse and jail, 1915, 319;
- To authorize and direct commissioners to erect and construct a county high school at Gardnerville, 1915, 335;
- To authorize commissioners to issue bonds for constructing and improving roads and highways, 1919, 465;
- Fixing salaries and compensation of certain county officers, 1919, 324.

Ormsby County

1443. Special acts concerning this county only have been passed as follows:

- To amend an act fixing salary of the justice of the peace of Carson township, 1913, 162;
- Empowering school trustees of district No. 1 to borrow money on its notes, 1917, 25;
- An act supplementary to an act to incorporate Carson City, approved February 25, 1875, 1917, 226;
- An act supplementary to an act to incorporate Carson City, approved February 25, 1875, 1917, 321;
- To authorize commissioners to issue bonds for obtaining site and erection of courthouse, 1919, 180;
- Authorizing trustees of Carson City to issue bonds for the construction and equipment of electric-lighting and power plant, and water-works, 1919, 280;
- To segregate and consolidate certain offices in Ormsby County and Carson City, 1919, 288;
- Authorizing commissioners to issue bonds for purchase of site for memorial building, 1919, 380;
- To amend section 31 of act to incorporate Carson City, approved February 25, 1875, 1919, 441.
- 1875, 87, to incorporate Carson City. Cited, *Barnes v. City of Carson*, 33 Nev. 40 (110 P. 3); *Quilici v. Strosnider*, 34 Nev. 22 (115 P. 177). Construed, *Chartz v. Carson City*, 39 Nev. 289, 296 (156 P. 925).
- 1907, 53, to amend section 10 of an act to incorporate Carson City. Cited, *Barnes v. City of Carson*, 33 Nev. 40 (110 P. 3); *Chartz v. Carson City*, 39 Nev. 286-291 (156 P. 925).
- 1449. Cited, *Lyon County v. Storey County*, 34 Nev. 243, 245, 246, 257, 261, 262 (117 P. 827). Similar statute, 1869, 88, cited on page 245.

Churchill County

1454. Special acts concerning this county only have been passed as follows:

- Authorizing school trustees of district No. 4 to issue bonds for installing water and sewer connections in school building, 1913, 19;
- To consolidate certain offices, 1913, 32;
- Fixing salaries of justices of the peace, 1913, 52;
- Fixing salaries of certain county officers, 1913, 122;
- Authorizing trustees of school district No. 4 to issue bonds, 1915, 79;
- Amending section 2 of act approved March 13, 1913, fixing salaries of certain county officers, 1915, 309;
- Fixing and establishing fees of county clerk, 1917, 6;
- Fixing salaries of certain justices of the peace, 1917, 14;
- Segregating certain county offices, fixing salaries and imposing certain duties on certain officers, 1917, 202;

Authorizing issuance of bonds for erection and maintenance of high-school building in Fallon, 1917, 246;

Concerning certain county officers, fixing salaries and compensation, 1919, 177;

Making district attorney ex officio public administrator, 1919, 258;

Authorizing, directing and empowering county commissioners to issue bonds to provide aid in construction of state highways, 1919, 266;

Authorizing county commissioners to issue bonds for assisting owners and entrymen of agricultural land, 1919, 371.

1905, 144, authorizing issuance of bonds for construction of county high school. Cited, *Dotta v. Hesson*, 38 Nev. 4 (143 P. 305).

Clark County

1456. Special acts concerning this county only have been passed as follows:

To authorize county commissioners to issue bonds to improve and maintain a public road in the Goodsprings road district, 1913, 49;

To authorize county commissioners to issue bonds for erection and furnishing of county buildings, 1913, 59;

To regulate the salaries of certain county officials, 1913, 119;

To amend section 2 of an act creating and organizing the county of Clark, 1913, 246;

To authorize county commissioners to issue bonds for construction of a county road between Mesquite and Saint Thomas, 1913, 249;

To amend the act to incorporate the town of Las Vegas, 1913, 267;

An act amendatory of the act creating and organizing the county of Clark, 1913, 302;

To establish commissioner districts, 1915, 146;

To regulate salaries of certain county officials, 1915, 177;

To regulate fees of county clerk, 1917, 48;

Fixing compensation of justice of the peace of Las Vegas township, 1917, 51;

Fixing salary of constable of Goodsprings township, 1917, 188;

Fixing and regulating compensation of district attorney, 1917, 213;

Providing that county commissioners may fix wages for teams and employees in construction and maintenance of roads, 1917, 291;

To amend an act to regulate salaries of certain county officials, 1919, 46;

Authorizing and empowering commissioners to issue bonds for aid in construction of state highways, 1919, 126;

To regulate salaries of certain county officials, 1919, 278.

Elko County

1459. Special acts concerning this county only have been passed as follows:

To regulate salary and compensation of certain justices of the peace and constables, 1913, 17;

To amend section 2 of an act to segregate certain officers, and fixing their salaries, approved March 27, 1907, 1913, 33;

Granting franchise to Elko-Lamoille power company, 1913, 105;

Creating office of deputy constable of Elko township, 1913, 125;

Fixing salary of justice of the peace and constable of Metropolis, 1913, 161;

To regulate fees of county clerk, 1913, 221;

To authorize commissioners to issue bonds for construction of high-school building in Wells, 1913, 240;

To regulate salary and compensation of justices of the peace and constables, 1915, 37;

To regulate fees of county clerk, 1915, 100;

To authorize county commissioners to allow appointment of certain deputy county officers, 1915, 300;

Authorizing commissioners to issue bonds to provide for construction of high-school dormitories in Elko and Wells, 1915, 344;

Fixing salary of county recorder, 1915, 393;

To authorize commissioners acting as town board for Elko to issue bonds for sewer system, 1917, 2;

To amend an act to regulate salary and compensation of certain justices of the peace, approved February 28, 1915, 1917, 60;

To regulate salary and compensation of justices of the peace and constables, 1917, 65;

To incorporate the town of Elko, 1917, 127;

To fix salary and compensation of justice of the peace of Jarbidge township, 1917, 175;

Fixing compensation of county officers, 1917, 295;

To amend section 2 of an act fixing compensation of county officers, approved March 23, 1917, 1919, 37;

To authorize commissioners to issue bonds for construction of gymnasium and dormitory for county high school in Wells, 1919, 38;

Authorizing acquisition of certain public utilities for Carlin, 1919, 188;

To authorize district attorney to employ an office stenographer, 1919, 239;

To authorize commissioners to issue bonds for purchase of site and construction of a hospital and purchase of a poor farm, 1919, 267;

Providing for purchase by county commissioners of buildings and real estate of the Nevada school of industry, 1919, 325;

Authorizing acquisition of public service system for Wells, 1919, 326;

To authorize commissioners to issue bonds for aid in the improvement of a state highway, 1919, 353;

To authorize school trustees of Elko school district No. 1 to issue bonds for building and equipping schoolhouse, 1919, 361;

To amend act fixing compensation of county officers, approved March 28, 1917, 1919, 367;

See, also, act fixing fees and mileage of witnesses in criminal cases in the district courts of certain counties, including this county, 1913, 260;

1895, 59, authorizing issuance of bonds for construction of county high school. Cited. *Dotta v. Hesson*, 38 Nev. 4 (143 P. 305).

1907, 93, authorizing issuance of bonds for building new schoolhouse. Construed, *State ex rel. Henderson Banking Co. v. McBride*, 31 Nev. 57 (99 P. 705).

1913, 240, authorizing issuance of bonds for construction of high-school building at Wells. Cited, *State ex rel. Dotta v. Brodigan*, 37 Nev. 38 (138 P. 914). Construed, *Dotta v. Hesson*, 38 Nev. 1 (143 P. 305).

Esmeralda County

1461. Special acts concerning this county only have been passed as follows:

To amend an act fixing salary of constable for Goldfield township, approved March 20, 1909, 1913, 48;

Fixing salary of justice of the peace of Goldfield township, 1913, 123;

To regulate fees of county clerk, 1913, 247;

To fix fees in civil cases in justice's court in Goldfield township, 1913, 248;

To amend an act fixing fees and mileage of witnesses in criminal cases in the district courts of certain counties, including this county, approved March 24, 1911, 1913, 260;

To definitely determine the boundary line between Esmeralda and Nye County, 1913, 312;

Fixing compensation of certain county officers, 1913, 363;

To amend act fixing salary of justice of the peace of Goldfield township, approved March 13, 1913, 1915, 153;

To amend act fixing compensation of certain county officers, approved March 25, 1913, 1915, 322;

To amend act fixing salary of constable for Goldfield township, approved March 10, 1913, 1915, 354;

Regulating compensation of chief engineer and other employees of Goldfield fire department, 1915, 356;

To authorize and empower commissioners to issue bonds for liquidating and paying outstanding indebtedness of the county, 1917, 80;

Regulating salary of chief of police and other peace officers of Goldfield, 1917, 216;

- To establish commissioner districts, 1917, 304;
- To create the office of purchasing agent of the county, 1917, 453;
- To repeal an act regulating salary of chief of police and other peace officers of Goldfield, approved March 15, 1917, 1919, 14;
- To repeal an act to establish commissioner districts, approved March 23, 1917, 1919, 14;
- To repeal an act to create the office of purchasing agent of the county, became a law March 22, 1917, 1919, 15;
- To authorize commissioners to issue bonds to improve and maintain post-roads, 1919, 264;
- Regulating compensation of county officers, 1885, 88, sec. 8. Cited, *Bradley v. Esmeralda County*, 32 Nev. 167 (104 P. 1058, 1060; 24 Ann. Cas. 680).
- 1891, 96, to consolidate certain county officers. Cited, *Bradley v. Esmeralda County*, 32 Nev. 167 (104 P. 1058, 1060; 24 Ann. Cas. 680).
- 1905, 210, regulating compensation of county officers. Cited, *Bradley v. Esmeralda County*, 32 Nev. 164 (104 P. 1058, 1060; 24 Ann. Cas. 680); *Tilden v. Esmeralda County*, 32 Nev. 324 (107 P. 881).
- 1907, 98, pertaining to compensation of county officers. Cited, *Tilden v. Esmeralda County*, 32 Nev. 324 (107 P. 881).

Eureka County

1465. Special acts concerning this county only have been passed as follows:

- Fixing salary and compensation of justice of the peace of Palisade township, 1913, 135;
- To create office of road supervisor, 1913, 239;
- Fixing salaries and compensation of officers, 1915, 19;
- Authorizing commissioners to pay certain expenses, 1917, 237;
- Authorizing commissioners to issue bonds for construction of schoolhouse at Palisade, 1919, 64;
- See, also, act fixing fees and mileage of witnesses in criminal cases in the district courts of certain counties, including this county, 1913, 260.

Humboldt County

1467. Special acts concerning this county only have been passed as follows:

- Authorizing commissioners to regulate and fix compensation of all justices of the peace excepting those of Lake and Union townships, 1913, 21;
- To authorize commissioners to issue bonds for construction of high school in Lovelock, 1913, 45;
- To provide for payment of actual expenses per diem of county commissioners, 1913, 64;
- To incorporate Winnemucca, 1913, 66;
- To amend act authorizing commissioners to regulate and fix compensation of all justices and constables, excepting those of Lake and Union townships, approved February 28, 1913, 1913, 129;
- Authorizing and directing commissioners to pay from county general fund \$500 monthly to cover expenses incurred by Humboldt County chamber of commerce, 1913, 275;
- To repeal last-mentioned act, 1915, 5;
- Authorizing appointment of certain officers, 1915, 124;
- To authorize school trustees of Winnemucca district No. 7 to issue bonds for purchasing site and constructing a school building, 1915, 160;
- To regulate fees of county clerk, 1915, 173;
- To authorize commissioners to provide for construction of additional story or stories to county high-school building, 1915, 365;
- Fixing compensation of deputy county recorder, 1915, 393;
- Fixing fees and compensation of witnesses, 1917, 8;
- To amend section 6 of act to create office of road supervisor, approved March 14, 1907, 1917, 211;
- Authorizing issuance of bonds of Lovelock for construction of a water system, 1917, 213;
- To authorize commissioners to allow the appointment of a deputy or deputies by the county assessor, 1917, 275;

- Fixing compensation of county commissioners, 1917, 275;
- To amend section 1 of act to regulate fees of county clerk, 1917, 297;
- Authorizing and directing commissioners to issue bonds for erection of high-school manual-training building in Lovelock, 1919, 16;
- Fixing compensation of county assessor, 1919, 20;
- Authorizing commissioners to issue bonds for purchase and installation of equipment of manual-training rooms in the high-school building in Winnemucca, 1919, 29;
- To authorize city council of Winnemucca to issue bonds for extending sewerage system, 1919, 276;
- To amend section 2 of act authorizing appointment of certain officers, approved March 12, 1915, 1919, 304;
- To authorize commissioners to issue bonds for improvement of state highway, 1919, 357;
- Authorizing issuance of bonds for construction of courthouse, 1919, 367;
- To authorize commissioners to issue bonds to aid in improvement of state highway, 1919, 457.
- 1903, 98, to provide for imprisonment of certain prisoners in branch county jail. Declared unconstitutional, *Wolf v. Humboldt County*, 32 Nev. 174, 175 (105 P. 286).
- 1913, 45, authorizing issuance of bonds for construction of high-school building at Lovelock. Cited, *Dotta v. Hesson*, 38 Nev. 4 (143 P. 305).

Lander County

1470. Special acts concerning this county only have been passed as follows:

- To amend act fixing fees and compensation of witnesses in criminal cases, approved March 8, 1909, 1913, 8;
- Authorizing commissioners to appoint night watchman for Battle Mountain, 1913, 13;
- Fixing salaries of county officers, 1913, 23;
- Fixing salary and compensation of constable of Austin township, 1913, 107;
- Authorizing commissioners to appropriate money for payment of rent and maintenance of offices for justices of the peace, 1915, 69;
- Fixing salaries of county officers, 1915, 110;
- To authorize and direct commissioners to acquire a site and erect branch county jail at Battle Mountain, 1917, 288;
- Fixing salaries of county officers, 1917, 298;
- To regulate salary of constable of Argenta township, 1919, 75.

Lincoln County

1473. Special acts concerning this county only have been passed as follows:

- To amend section 5 of act to consolidate certain county offices, approved March 18, 1911, 1913, 15;
- To repeal an act to fix the salary of the justice of the peace of Caliente township, approved March 13, 1911, 1913, 19;
- To amend section 1 of an act to authorize commissioners to empower fire commissioners of Caliente to issue bonds for paying off outstanding indebtedness of said town, 1913, 34;
- Fixing salary of district attorney, 1913, 268;
- Repeal section 14 fixing salaries of county officers, 1913, 269;
- For relief of the county of Lincoln, 1913, 308;
- Concerning county officers and fixing their salaries, 1915, 388;
- To amend section 5 of act concerning county officers and fixing their salaries, approved March 15, 1915, 1917, 66;
- Fixing and establishing fees to be charged by county recorder, 1917, 176;
- To regulate fees of county clerk, 1917, 183;
- Creating commissioner districts, 1917, 211;
- To amend an act authorizing Lincoln County to fund and refund its existing indebtedness, approved March 5, 1907, 1917, 322;
- To amend section 3 of an act concerning Lincoln County officers and fixing their salaries, approved March 25, 1916, 1919, 125;

1477. Cited, *Lyon County v. Storey County*, 34 Nev. 245.

Lyon County**1478. Special acts concerning this county only have been passed as follows:**

Fixing and regulating salaries and fees of justices of the peace, 1913, 16;

To amend section 4 of act consolidating certain county offices of Lyon County, approved March 15, 1891, 1915, 136;

To amend section 2 of act to segregate offices of sheriff and county assessor, approved March 18, 1911, 1917, 43;

Fixing fees and compensation of witnesses in criminal cases, 1917, 50;

To authorize and direct trustees of school district No. 18 to issue bonds for purpose of liquidating and retiring floating indebtedness, 1917, 189;

Authorizing and directing commissioners to issue bonds for establishing, constructing and maintaining high schools, 1917, 299;

Concerning county officers; fixing salaries and compensation; regulating appointment of deputies, 1919, 191;

Concerning county officers; fixing salaries and compensation; regulating appointment of deputies, 1919, 255;

To amend section 60 of act to incorporate town of Yerington, 1919, 258;

Authorizing and empowering commissioners to issue bonds for aid in construction of state highways, 1919, 467;

1909, 145, authorizing issuance of bonds for construction of high school in Yerington. Cited, *Dotta v. Hesson*, 38 Nev. 4 (143 P. 305).

See *Quilici v. Strosnider*, 34 Nev. 9, under section 1496.

Mineral County**1480. Special acts concerning this county only have been passed as follows:**

To authorize commissioners to issue bonds for maintenance of county high school in Hawthorne, 1915, 7;

To regulate fees and compensation for official and other services, 1915, 138;

To authorize and empower commissioners to issue bonds for paying current expenses, 1915, 314;

To authorize commissioners to issue bonds for purpose of building and furnishing a schoolhouse in Mina district No. 17, 1917, 76;

To authorize commissioners to issue bonds for repairing and furnishing a schoolhouse in Hawthorne school district No. 7, 1917, 207;

To authorize commissioners to issue bonds for erection of a county high-school building in Hawthorne, 1917, 305;

Fixing and regulating salary and fees of justice of the peace in Mina township, 1919, 64;

To regulate fees and compensation for county and township officers for official and other services, 1919, 165;

Authorizing, directing and empowering commissioners to issue bonds for aid in construction of state highways, 1919, 246;

Fixing and regulating salary and fees of justice of the peace in Hawthorne township, 1919, 288;

Fixing and regulating salary and fees of justice of the peace of Luning township, 1919, 334;

To amend section 9 of act creating the county of Mineral, approved February 10, 1911, 1919, 336.

See, also, act fixing fees and mileage of witnesses in criminal cases in the district court of certain counties, including this county, 1913, 260.

Nye County**1482. Special acts concerning this county only have been passed as follows:**

To amend an act fixing compensation of county and township officers, approved March 24, 1909, 1913, 8;

To amend an act fixing compensation of county and township officers, approved March 24, 1909, 1913, 322;

To repeal an act to authorize and empower commissioners to issue bonds for liquidating and paying outstanding indebtedness, approved March 20, 1911, 1915, 14;

To amend section 1 of act fixing compensation of county and township officers, approved March 24, 1909, 1915, 96;

Fixing compensation of county clerk, 1915, 429;

Fixing salaries of certain justices of the peace, 1917, 188;

Fixing compensation of county officers, 1917, 191;

To amend an act fixing salaries of certain justices of the peace, approved March 14, 1917, 1919, 246;

To amend section 5 fixing compensation of county officers, approved March 14, 1917, 1919, 330;

To authorize commissioners to issue bonds for retiring certain bonds of Rhyolite school district, 1919, 441.

1909, 223, fixing compensation of county and township officers. Construed, *Heywood v. Nye County*, 36 Nev. 569, 571 (137 P. 515).

Pershing County

An Act creating and organizing the county of Pershing out of a portion of Humboldt County, and providing for its government, and to regulate the affairs of Humboldt County and Pershing County.

Approved March 18, 1919, 75

County established—Boundaries.

SECTION 1. The county of Pershing is hereby created out of the following territory, to wit:

All of that portion of Humboldt County as now constituted, lying west and south of a line drawn as follows, to wit: Beginning at a point where the 7th standard parallel north crosses the westerly boundary line of Humboldt County; thence east along said 7th standard parallel north to the point of intersection of said parallel with the range line between townships twenty-eight (28) and twenty-nine (29) east; thence south along said range line to the corner of townships thirty-four (34) and thirty-five (35) north, ranges twenty-eight (28) and twenty-nine (29) east; thence east along the township parallel between townships thirty-four (34) and thirty-five (35) north to the corner of townships thirty-four (34) and thirty-five (35) north, ranges thirty-eight (38) and thirty-nine (39) east; thence south along the range line between ranges thirty-eight (38) and thirty-nine (39) east to the corner of townships thirty-two (32) and thirty-three (33) north, ranges thirty-eight (38) and thirty-nine (39) east; thence east along the township parallel between townships thirty-two (32) and thirty-three (33) north to the corner of townships thirty-two (32) and thirty-three (33) north, ranges forty-one (41) and forty-two (42) east; thence south along the range line between townships forty-one (41) and forty-two (42) east to the point of intersection of said range line with the boundary line between Humboldt and Lander Counties.

County-seat.

SEC. 2. The place known officially as Lovelock, being the city and post-office of Lovelock, is hereby designated and made the county-seat of Pershing County, at which place shall be erected and maintained the county and judicial offices and the necessary county buildings.

[Remainder of act, not relating to boundaries or county-seat, omitted.]

Stats. 1919, 75, creating and organizing the county of Pershing out of a portion of Humboldt County, is not a local law "in and for" Humboldt County, making necessary referendum to the voters of such latter county under Const. art. 19, sec. 3, providing the

referendum powers are reserved to the electors of each county as to all local legislation in and for the respective counties. *Pershing County v. District Court*, 43 Nev. — (181 P. 961, 962).

Act creating and organizing the county of Pershing, 1919, 75;

To amend sections 16 and 19 of act creating and organizing the county of Pershing, 1919, 82;

To authorize commissioners to issue bonds for purchase of site and erection of county buildings, 1919, 243;

To authorize commissioners to issue bonds for aid in improvement of state highway, 1919, 454.

Washoe County

1485. Special acts concerning this county only have been passed as follows:

To fix salary of constable of Wadsworth township, 1913, 10;

Providing for additional assistance to the county clerk, 1913, 254;

To abolish the office of justice of the peace and of constable for Olinghouse township, 1913, 255;

To establish assembly districts, 1913, 259;

Relating to compensation of county officers, 1913, 263;

To amend an act to incorporate the town of Reno, 1913, 276;

Fixing and regulating salaries of commissioners, 1913, 277;

To amend an act to incorporate the town of Reno, 1913, 314;

To amend an act to incorporate the town of Reno, 1913, 325;

Fixing compensation of justice of the peace of Reno township, 1913, 372;

To amend an act to incorporate the town of Reno, 1913, 380;

To amend an act to incorporate the town of Reno, 1915, 37;

To amend an act fixing the compensation of the justice of the peace of Reno township, approved March 25, 1913, 1915, 86;

To provide for the construction and equipment of a high-school building in the city of Sparks, 1915, 102;

To amend section 1 of an act fixing and regulating salaries of certain county officers, approved March 23, 1909, 1915, 113;

To amend an act to incorporate the town of Reno, 1915, 253;

To authorize commissioners to issue bonds to provide for construction of a new bridge across the Truckee River at Reno, 1915, 357;

To amend an act to incorporate the town of Sparks, 1915, 403;

To establish assembly districts, 1917, 9;

To amend section 2 of an act to regulate the fees and compensation of the county clerk, approved March 23, 1909, 1917, 11;

Authorizing and empowering the city council of Reno to dispose of certain real estate, 1917, 22;

Authorizing and empowering the city council of Reno to dispose of certain real estate, 1917, 45;

To amend an act to incorporate the town of Sparks, 1917, 87;

To amend an act to incorporate the town of Reno, 1917, 101;

To amend an act to incorporate the town of Reno, 1917, 171;

Fixing and regulating salary and fees of the justice of the peace of Salt Marsh township, 1917, 201;

Authorizing coroner of Reno township to employ a stenographer to report and transcribe testimony at inquests, 1917, 216;

Authorizing and empowering city council of Reno to dispose of certain real estate, 1917, 343;

To authorize commissioners to issue bonds for improvement of county public roads, 1917, 387;

To authorize commissioners to issue bonds for deepening Truckee River channel, 1917, 407;

Fixing and regulating salary and fees of justice of the peace and constable of Bald Mountain township, 1919, 38;

Fixing and regulating salary and fees of justice of the peace and constable of Verdi township, 1919, 63;

To amend an act to regulate fees and compensation of county clerk, 1919, 184;

To authorize, empower and direct commissioners to issue bonds for improvement and construction of roads and highways, 1919, 249;

To amend an act relating to compensation of county officers, approved March 22, 1913, 1919, 284;

To authorize commissioners to issue bonds for improvement of highway across the county, 1919, 339;

To repeal an act providing a salary for the county surveyor, 1919, 351;

To amend an act to incorporate the town of Reno, 1919, 366.

1903, 184, to incorporate the town of Reno. Cited, *Ex Parte Ah Pah*, 34 Nev. 287 (119 P. 770).

1905, 98, to amend the title and to amend an act to incorporate the town of Reno. Cited, *Ex Parte Ah Pah*, 34 Nev. 287 (119 P. 770).

1905, 121, sec. 10. Cited, *State v. Reno City Council*, 36 Nev. 336, 339 (136 P. 110; 50 L. R. A. (N.S.) 195); *City of Reno v. Stoddard*, 40 Nev. 540 (167 P. 317).

1915, 37, an act to amend certain sections and articles of an act to incorporate the town of Reno. Cited, *In Re Dixon*, 40 Nev. 232-237 (161 P. 737).

1915, 253, an act to amend certain sections and articles of an act to incorporate the town of Reno. Construed, *Ex Parte Counts*, 39 Nev. 61-69 (153 P. 93).

1915, 256, sec. 10. Construed, *City of Reno v. Stoddard*, 40 Nev. 540-559 (167 P. 317).

1915, 273 (preceding act). Construed, *City of Reno v. Dixon*, 42 Nev. 67 (172 P. 368).

1917, 102, sec. 10, to amend certain sections and articles of an act to incorporate the town of Reno. Cited, *City of Reno v. Stoddard*, 40 Nev. 541-588 (167 P. 317).

1917, 119, sec. 10, an act to amend certain sections and articles of an act to incorporate the town of Reno. Construed, *City of Reno v. Dixon*, 42 Nev. 67 (172 P. 368).

1486. Cited, *Quilici v. Strosnider*, 34 Nev. 20 (115 P. 177).

White Pine County

1488. Special acts concerning this county only have been passed as follows:

To provide a county high school in the city of Ely, 1913, 4;

To amend section five of an act to provide for a high school in the city of Ely, approved February 28, 1913, 1913, 30;

Fixing and regulating compensation of district attorney, 1913, 34;

Abolishing office of road supervisor, 1913, 36;

Fixing and establishing fees of county clerk, 1913, 159;

To amend an act to provide for a county high school in the city of Ely, approved February 28, 1913, 1913, 225;

Fixing fees to be charged and collected by county recorder, 1913, 266;

Fixing and establishing fees of county clerk, 1913, 382;

Fixing and establishing fees of county clerk, 1915, 10;

To enable county commissioners to fix salaries and authorize appointment of certain deputies, 1915, 58;

To repeal an act to provide a typewriter operator for the county clerk, 1915, 89;

To provide for completion of county high-school building in the city of Ely, 1915, 91;

To authorize commissioners to issue bonds for building and furnishing a schoolhouse in Lund school district, 1915, 131;

To authorize county commissioners to issue bonds for building and furnishing a schoolhouse in Preston school district, 1915, 169;

Abolishing the office of road supervisor, 1915, 355;

Fixing and regulating compensation of constable in Ely township No. 1, 1915, 357;

To authorize commissioners to issue bonds to purchase site, erect buildings, furnish and equip them in Ely school district No. 1, 1917, 177;

To amend an act to segregate certain county offices, approved March 29, 1907, 1917, 203;
To make sheriff ex officio constable of Ely township No. 1, 1917, 204;
Fixing and regulating compensation of the constable of Ely township No. 1, 1917, 204;
Fixing and regulating compensation of district attorney, 1917, 205;
To authorize commissioners to issue bonds for aid in improvement of a highway across the county, 1919, 270;
To repeal an act abolishing the office of road supervisor, approved March 24, 1915, 1919, 271;
To provide for the erection of an extension to the White Pine County hospital, 1919, 272;
To provide for the erection, furnishing, and equipment of a manual-training building for the White Pine County high school, 1919, 395.
1907, 43, granting franchise to the Ely water company. Construed, *Ely Water Company v. White Pine County*, 38 Nev. 473, 474 (151 P. 335; L. R. A. 1916D, 431).
1913, 4, to provide for issuance of bonds for erection of county high school. Cited, *Dotta v. Hesson*, 38 Nev. 4 (143 P. 305).
1496. Rev. Laws, 1478, provides for the removal of the offices, archives and other movable property of the county from Dayton to Yerington. This section provides for the removal of county-seat by majority of the voters at an election called on petition of three-fifths of the taxpayers who are electors. Section 21 of article 4 of the state constitution (Rev. Laws, 279) provides that in all cases enumerated in section 20, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform application throughout the state. Prior to the last general election the courthouse at Dayton was destroyed by fire. Held, that the special act was justified on the ground that an emergency existed, calling for prompt action. *Quilici v. Strosnider*, 34 Nev. 9, 19 (115 P. 177).

COUNTY GOVERNMENT

COUNTY COMMISSIONERS

1503. Date of meetings—Special meetings—Temporary appointments.

SEC. 3. The meetings of the board of county commissioners shall be held at the county-seats of their respective counties on the fifth day of each month and every calendar month; *provided*, that when such day falls upon a Sunday or legal holiday, the board shall meet upon the next succeeding judicial day. Special meetings may be held at the county-seat for the transaction of business pertaining to the county, whenever said meeting shall be authorized by the board by resolution duly adopted and entered upon its minutes at a regular meeting; *provided*, that when there shall be in any county, township or precinct office, no officer duly authorized to execute the duties thereof, and it is necessary that a temporary appointment be made to fill such office, as otherwise provided by law, the board of county commissioners shall be authorized and empowered, and it shall become its duty to forthwith hold a special meeting for such purpose. Said meeting may be held by unanimous consent of the said board, or, if for any cause such consent be not obtainable, it shall thereupon become the duty of the chairman or any other member of the board having knowledge of such necessity, to forthwith call such special meeting and to notify the other members thereof, and such meeting shall be held as soon as practicable, but not less than three days, except by unanimous consent, after actual notice to all members of said board, whereupon a majority thereof

shall proceed to act upon such appointment as provided by law. The board shall also meet on the tenth day after each general election to canvass election returns. *As amended, Stats. 1913, 22; 1915, 74; 1917, 1.*

1508. In view of this section and Rev. Laws, 7028, 7029, it was held that, there being a presumption that public officers perform the duties required of them by law, the grand jury cannot hire an accountant to examine the books of county officials; it being their duty, in case there is reason to believe that the books of the county should be audited, to request either the board of county commissioners or the governor to provide for such auditing. *Stone v. Bell, 35 Nev. 240, 246 (129 P. 458).*

Cited, *First National Bank of San Francisco v. Nye County, 38 Nev. 139 (145 P. 932; Ann. Cas. 1917C, 1195).*

Giving negotiable notes for temporary loans made by county commissioners in case of great necessity or emergency, to be paid from the next tax levy, under authority of Rev. Laws, 3831, 3832, is not within subdivision 13 of this section, empowering county commissioners to do things "strictly necessary" to the full discharge of their powers. *First National Bank of San Francisco v. Nye County, 38 Nev. 124, 138, 139 (145 P. 932; Ann. Cas. 1917C, 1195).*

A county having had the benefit of money obtained by county commissioners on a temporary loan under Rev. Laws, 3831, is estopped to assert that there did not exist a case of great emergency authorizing the commissioners making the loan. *Id.*

1513. Repealed, Stats. 1915, 6.

1513. Held, that this section did not authorize a recount before the court, but left the parties free without a recount by the board to initiate such contests in the courts as might otherwise be prescribed by law. *Brown v. Dunn, 35 Nev. 166, 171, 172, 173, 176 (127 P. 81).*

This section was not repealed by Stats. 1913, 493, the general election law, under Const. art. 4, sec. 21, providing that where a general law can be made applicable, all laws shall be general and uniform in operation; since a general statute will not repeal particular provisions of a former act unless the two conflict irreconcilably. *McBride v. Griswold, 38 Nev. 56-63 (146 P. 756).*

Under Const. art. 4, sec. 17, providing that each law enacted shall embrace but one subject which shall be briefly expressed in the title, this section is constitutional. *Id.*

This section is not void as vesting judicial power in the boards of county commissioners. *Id.*

Under this section, the board may reconvene after adjournment as a board of canvassers to conduct a recount, even in the absence of express authority in the statutes; the imposition of a specific duty always implying power and function to perform it in a reasonable manner. *Id.*

Where various remedies as to election contests were afforded, at common law, under the code of civil procedure, and this section, these remedies are concurrent, not being incompatible, and the party seeking relief may use any. *Id.*

1523. Under this section and Rev. Laws, 1535 and 1541, providing that demands against a county must be presented in the form of bills, one having several liquidated claims may put them in one bill, and where specified demands are allowed and others rejected, the claimant may accept the amount allowed and sue for the claims disallowed in whole or in part; and a constable presenting monthly bills made up of various items for services rendered, for which the statute prescribes fees, may accept the part allowed and sue for the part disallowed, though in the case of an unliquidated demand, the allowance of a part requires claimant to accept the part as satisfaction for the claim, or sue for the entire demand. *Wolf v. Humboldt County, 36 Nev. 26, 32, 33 (131 P. 964, 45 L. R. A. (N.S.) 762).*

1530. Repealed in part by Stats. 1915, 65.

1535. See *Wolf v. Humboldt County, 36 Nev. 26*, under section 1523.

1541. See *Wolf v. Humboldt County, 36 Nev. 26*, under section 1523.

An Act authorizing the board of county commissioners of the various counties in the state to acquire real estate and to sink, or cause to be sunk thereon, artesian wells, and making the expense thereof a legal charge against the county.

Approved February 20, 1913, 12

Authorized to sink artesian wells.

SECTION 1. The board of county commissioners of the various counties of the State of Nevada are hereby authorized and empowered to acquire, by gift or purchase, in the name of the county, real estate, favorably situated for the prospecting for artesian water, and when title to one or more such pieces of real estate of not less than forty acres in a tract is thus acquired by any county in this state, the board of county commissioners of such county is hereby authorized and empowered to sink, or cause to be sunk, upon one or more of said pieces or tracts of land, an artesian well; *provided*, no county shall, during any one year, expend more than five thousand dollars (\$5,000) in sinking or causing to be sunk artesian wells.

County charge.

SEC. 2. The expense of sinking artesian wells as herein provided shall be a legal charge against the county in which said wells are sunk, and shall be paid as other claims against the county are paid.

An Act to regulate the sale of intoxicating liquors outside of the corporate limits of any incorporated city or town; creating a liquor board in the several counties of this state; prescribing the duties and declaring the powers of such board.

Approved March 24, 1917, 356

Restricted outside of city limits—Board, how constituted.

SECTION 1. The board of county commissioners, the district attorney, and the sheriff in each of the several counties in this state are hereby authorized, empowered and commissioned, for the purposes of this act, to act jointly (without further compensation) as a liquor board, to grant or refuse liquor licenses, and to revoke the same whenever there is, in the judgment of a majority of such board, sufficient reason for such revocation. It is hereby declared to be the power and duty of the liquor board in each of the several counties of the state to enact ordinances regulating the sale of intoxicating liquors in their respective counties; fixing the hours of each day during which liquor may be sold or disposed of; prescribing the conditions under which liquor may be sold or disposed of; prohibiting the employment or service of females in the sale or disposition of liquor; and prohibiting the sale or disposition of liquor in places where, in the judgment of the board, such sale or disposition may tend to create or constitute a public nuisance, or where by the sale or disposition of liquor a disorderly house or place is maintained; *provided*, all liquor dealers within any incorporated city or town are to be exempt from the force and effect of this act and are to be regulated only by the city government therein.

An Act to authorize the county commissioners of any of the counties of the State of Nevada to purchase or construct railway lines, and to issue bonds for that purpose.

Approved February 27, 1915, 62

Purchase or construct railroads.

SECTION 1. The county commissioners of any of the counties of this state are hereby authorized, upon there being filed with them a petition

signed by two-thirds of the taxpayers of the county, requesting them so to do, to purchase or construct a railway line, or lines, within the limits of the county, if in their judgment it would be to the interest of the county, so to do, and to pay for the same out of the general fund of the county or from a fund to be created for that purpose by the sale of bonds as hereinafter provided.

Title vests in county.

SEC. 2. The title to any railway line or lines constructed or acquired by or under the authority of any board of county commissioners in this state, as provided in this act, shall be vested in said county, and under its control and management.

Petition, action upon.

SEC. 3. Upon the filing of the petition provided for in section 1, if the county commissioners shall adjudge it to be to the interest of the county to build or construct the railway line specified in such petition, and if in the opinion of the said county commissioners it is advisable that funds for that purpose should be acquired by the sale of bonds, the county commissioners shall, not later than eight weeks before any general or special election, determine the amount of such bonds to be issued and make and enter in their minutes a certificate of such determination, and make and enter an order submitting the question of the issuance of such bonds to the qualified electors of said county. If such order of submission shall be made and entered more than six months prior to the time for holding a general election, the board of county commissioners may order a special election for said purpose, which said special election shall be conducted in the manner provided by law for conducting elections, and the ballots at such election shall have printed thereon the words: "For the County Railway Bonds," and the words: "Against the County Railway Bonds." The votes cast for and against the issuance of said bonds at any election therefor shall be counted and returns thereof made and canvassed in the manner provided by law for counting, making returns, and canvassing the votes of a general election.

Duties of county commissioners.

SEC. 4. If a majority of the votes cast on a proposition to issue such bonds shall be in the affirmative, it shall be the duty of the board of county commissioners, as soon thereafter as practicable, to issue the negotiable coupon bonds of the said county in such form and denomination as the board may direct, said bonds to run for a period of from one to twenty years from the date of issue, and bearing interest at a rate not exceeding six (6) per cent per annum, both principal and interest payable at the office of the county treasurer of such county, interest payable semiannually, and said bonds to be sold for not less than par and provided that such bonds shall be issued for such periods of time that there shall always be bonds redeemable by any funds in excess of one thousand dollars available in the county railway bond fund by this act hereinafter created. And before any sale is made of said bonds notice of such proposed sale shall be given by publication in a newspaper published in the county, if there be one published in the county, and if not, then by publication in the newspaper published nearest to the county-seat of said county, for at least ten (10) days before such bonds are disposed of, inviting sealed bids to be made for said bonds; and said bonds shall be sold only to the highest and best bidder therefor.

Concerning bonds.

SEC. 5. All bonds issued under the provisions of this act shall be signed by the chairman of the board of county commissioners, countersigned by the county treasurer, and authenticated with the seal of the county. Coupons for interest shall be attached to each bond, so that the same may be removed without injury to the bonds, and each of said coupons shall be consecutively numbered, and signed by the chairman of said board and by the county treasurer.

Railway bond fund provided for.

SEC. 6. For the purpose of creating a fund for the payment of the principal and interest of the bonds so issued, the board of county commissioners of such county so issuing such bonds is authorized and directed to levy and collect annually thereafter a special tax upon all the property, both real and personal, subject to taxation, including the proceeds of mines, within the boundaries of such county, until such bonds and the interest thereupon have been fully paid and discharged, sufficient to pay the interest upon said bonds, and to provide a fund for the payment of the principal of the same according to their tenor and effect. Such tax shall be levied and collected in the same manner and at the same time as other taxes are assessed and collected, and the proceeds thereof shall be kept by the county treasurer in a fund known as the "County Railway Bond Fund," and paid out therefrom only in the payment of the principal and interest of said bonds; *provided*, that when the principal and interest of the said bonds shall have been fully paid, and all of said bonds retired, any and all moneys remaining on hand in said fund shall be transferred to the general fund of said county.

Redemption of bonds.

SEC. 7. Whenever the county treasurer shall pay and redeem any bond issued under the provisions of this act, he shall forthwith cancel the same by writing across the face thereof the word "Paid," together with the date of such payment, and sign his name thereto, and turn the same over to the county auditor, taking his receipt therefor, which receipt shall be filed with the clerk of the board of county commissioners, and the auditor shall credit the treasurer on his books for the amount so paid.

Interest ceases, when.

SEC. 8. Should the holder of such bonds, or any of them, for any cause whatever, fail to present such bonds to the said county treasurer when they become due, all interest on such bonds shall thereafter immediately cease.

An Act authorizing and empowering the boards of county commissioners of the several counties of this state to exploit and promote the agricultural, mining, and other resources, progress, and advantages of their respective counties; providing ways and means for this purpose, and repealing all acts and parts of acts in conflict herewith.

Approved March 1, 1915, 64

Authorized to advertise resources.

SECTION 1. The boards of county commissioners of the several counties of this state are hereby authorized and empowered to, in their discretion, annually include in their respective county budgets items to cover the expense of exploiting, promoting, and publishing to homeseekers and the public at large, by any means in their judgment calculated to accomplish

this purpose, the agricultural, mining, and other resources, progress, and advantages of their respective counties.

Tax levy for same.

SEC. 2. Such expenditures as may by the board of county commissioners of any county in this state be decided upon shall be met by including the same in the annual tax levy of and for that county; *provided*, that the tax levy for this purpose shall not in any one year exceed one cent on each one hundred dollars of the assessed valuation of the property in that county; *provided further*, that, pending the accumulation and setting aside of the fund for the purposes authorized by this act, said boards of county commissioners are hereby authorized and empowered to pledge their respective counties for said purposes to an amount not exceeding the sum to be raised as in this section provided, and to be paid out of the fund raised and set aside therefor as herein authorized.

Limited repeal of certain acts.

SEC. 3. Section 1 of an act entitled "An act to amend an act entitled 'An act supplementary to an act entitled "An act to create a board of county commissioners in the several counties of the state and to define their duties and powers," approved March 8, 1865,' approved February 19, 1867," approved March 24, 1911, and all other acts and parts of acts in conflict with this act, are hereby repealed in so far as the same apply to or interfere with the provisions of this act, but in no other particular.

AUDITORS AND TREASURERS

An Act to promote uniformity in accounting of county treasurers and county auditors and providing a penalty for the violation of same.

Approved March 28, 1919, 331

Treasurers to issue triplicate receipts—Apportionment of revenue.

SECTION 1. The county treasurer of each county in the state shall issue a receipt in triplicate for all moneys received by him. The original shall be delivered to the payee, the duplicate immediately filed by the treasurer with the county auditor, and the triplicate retained by the treasurer. The duplicate and triplicate receipts shall, in addition to showing the amount and source of revenue, contain an apportionment to the proper funds as follows:

All revenue collected for general, administrative, current expense, salary, indigent, and contingent purposes shall be apportioned to the general fund.

All revenue collected for special purposes shall be apportioned to special funds that are at present or may hereafter be created, the purpose of which shall be indicated in the title of each.

Duties of treasurers.

SEC. 2. The county treasurer shall keep a complete record of the source and amount of all receipts, apportionments to, payments from, and balances in all funds, and shall submit to the board of county commissioners, at its first regular meeting each month, a statement containing the above information for the previous month, giving the balance in each county, state and special fund, the total amount in all district school funds, and the total thereof at the close of business on the last day of each month, together with a statement of all moneys on deposit, outstanding checks against same, and cash on hand. This statement shall be supported by certified statements from each county depository showing the amount on deposit to the credit of such county treasurer on said date, and shall be subscribed and sworn to before the county auditor before being submitted to the board of county commissioners.

Duties of auditors.

SEC. 3. The county auditor of each county shall audit all apportionments made by the treasurer, keep a complete record of all such apportionments to and disbursements from funds, and in addition thereto shall keep accounts showing the amount of revenue received from each of the various sources, the amount of expenditures of the various departments and the object of such expenditures, and shall submit to the board of county commissioners, at its first regular meeting in January, April, July and October of each year, a statement containing the above information in such detail as may be required, but which shall in any event show the amount of outstanding warrants against and the available balance in each county, state and special fund, the total amount in all district school funds, and the total thereof, together with the following analysis of receipts and disbursements for the previous quarter :

RECEIPTS:	County	State	Total
Taxes, General Property.....	\$	\$	\$
Taxes, Personal Property.....			
Taxes, Proceeds of Mines.....			
Delinquent Tax Penalties.....			
Inheritance Taxes.....			
Corporation Tax.....			
Poll Tax (Assessor).....			
District Court Fines.....			
Justice Court Fines.....			
Escheated Estates.....			
Fees, Recorder			
Fees, Clerk			
Fees, Sheriff			
Fees, Treasurer			
Fees, Justice Court.....			
Fees, Constables			
Licenses			
Interest on County Deposits.....			
State School Moneys.....			
State Nomination Fees.....			
State Vocational Educational Aid.....			
Forest Reserve Receipts.....			
Miscellaneous			
Bond Sales			
Loans			
Total Receipts			
EXPENDITURES:			
Offices, Departments and Accounts:			
County Commissioners		\$	
Clerk			
Treasurer			
Recorder and Auditor.....			
Assessor			
Sheriff			
Game Warden			
District Attorney			
District Court			
Justice Courts			
Constables			

Grand Juries	
Trial Juries	
Courthouse Maintenance	
Courthouse Furniture and Equipment	
County Jails	
Books and Records	
Telephone and Telegraph	
Publishing and Advertising	
Elections	
Insurance	
Bounties	
Miscellaneous	
County Hospital Maintenance	
County Hospital Furniture and Equipment	
Dependent Mothers	
Dependent Orphans	
Indigent Allowances	
Probation Department	
Health Department	
<hr/>	
Total Expenditures from General Fund	\$
Roads and Bridges	\$
Road and Bridge Equipment	
<hr/>	
Total Expenditures from Road Fund	\$
County-State Highway Fund, Total Expenditures	\$
County Bonds Redeemed	\$
Interest Paid	
<hr/>	
Total Expenditures from Redemption Fund	\$
Special Fund Expenditures	\$
High-School Fund Expenditures	\$
County School Fund Expenditures	
District School Fund Expenditures	
<hr/>	
Total Educational Fund Expenditures	\$
State Settlements	\$
<hr/>	
Total Expenditures	\$

Act mandatory.

SEC. 4. This act shall be considered mandatory, and any county treasurer or county auditor failing to comply with the provisions thereof shall be deemed guilty of malfeasance, misfeasance, or nonfeasance in office.

ASSESSORS

An Act making it the duty of the several county assessors of the State of Nevada to report to the secretary of state the ownership of and other information concerning motor vehicles within their respective counties.

Approved March 22, 1915, 301

Assessors must report owners of motor vehicles.

SECTION 1. It shall be the duty of the several county assessors of the State of Nevada to report annually, in writing, to the secretary of State of Nevada, not later than the third Monday in January of each year, commencing in January, 1916, the name of each and every owner of any motor vehicle within his respective county, together with the name of the maker, factory number, style of vehicle, and motor power.

"Motor vehicle" defined.

SEC. 2. By "motor vehicle" is meant such vehicles propelled by any power other than muscular power; *provided*, that nothing herein contained shall apply to traction engines, road-rollers, street-cars, railway motors, or railway locomotives.

DISTRICT ATTORNEYS**1608. District attorney to report convictions.**

SECTION 1. On the fourth Monday of March and August of each year the several district attorneys, or other persons charged by law with the prosecution of criminals, shall make a report, in writing to the attorney-general containing a concise statement of the facts of each case prosecuted by them since the last report herein required in which a conviction was had. Upon receipt of such statement the attorney-general shall file the same in his office, and shall not permit the same to be taken therefrom except at the request of the board of pardons, or a member thereof. Such statement shall be considered by the board of pardons as *prima facie* evidence of the matter therein contained. *As amended, Stats. 1915, 387.*

RECORDERS

An Act providing for the recordation of certificates of honorable discharge from the military and naval service of the United States.

Approved April 1, 1919, 440

Honorable discharges.

SECTION 1. The county recorders of the various counties of this state are hereby required to procure books containing suitable blanks wherein to record certificates of honorable discharge from the military and naval service of the United States.

Recorded free.

SEC. 2. All such recorders are hereby required to record therein all such certificates as may be presented to them for record, free of any charge therefor, and make thereon the customary certificate of such record.

SHERIFFS**1645. Appointment of deputies.**

SEC. 3. Each sheriff shall have power to appoint, in writing, signed by him, one or more deputies, who are hereby empowered to perform all the duties devolving on the sheriff of the county; and the sheriff shall be responsible for all the acts of his deputy or deputies, and may remove such deputy or deputies at pleasure; but no deputy sheriff shall be qualified to act as such unless he shall have been a resident of the State of Nevada for at least six months prior to the date of his appointment, and until he has taken an oath to faithfully and impartially discharge the duties of said office, which said oath shall be certified on the back of his appointment, and filed in the office of the county auditor. The sheriff may also require of his deputies such bonds as to him shall seem proper. *As amended, Stats. 1913, 108.*

1661. Repealed, Stats. 1915, 247.

TREASURERS**1681. To pay all county warrants.**

SEC. 8. He shall pay all warrants of the county auditor when presented and write on the face of the warrant the date of payment and his signature.

SEC. 2. All acts and parts of acts in conflict with any of the provisions of this act are hereby repealed.

Payment barred, when.

SEC. 3. This act shall take effect immediately upon its passage and approval; *provided, however*, that such warrants are required to be presented for payment within two years from the date they bear, and upon their being unrepresented for two years from such date, their payment shall be forever barred. *As amended, Stats. 1913, 54.*

DUTIES OF CERTAIN OFFICERS

An Act requiring all county officers to file vouchers for all expenses allowed by law, traveling or otherwise.

Approved March 22, 1913, 264

Officers must file vouchers.

SECTION 1. Any county or township officer presenting a claim to the county for traveling or other expenses allowed by law, shall attach itemized vouchers and receipts for the same to their claims, and the county commissioners of the several counties in this state are hereby prohibited from allowing such claims unless accompanied by vouchers and receipts as required by this section, and in no case shall a greater sum be allowed for a private conveyance than is usually charged by public carriers or conveyances for a similar distance, and if the service is rendered by automobile, such amount shall always be determined by the board of county commissioners and shall in no case exceed the sum of fifty cents per mile one way only. Automobile service shall only be used in cases of emergency, or by and with the consent of the county commissioners.

1701. Certain expenses allowed.

SEC. 21. The State of Nevada shall allow the several counties of this state, for the services rendered under the revenue act by the auditor, assessor, and treasurer of each county, a sum which shall be the proportion of the state tax to the whole tax levied by the county on the basis of salaries allowed said officers by any special or general act relating to the same. These allowances shall be made at the time of the semiannual settlement provided by law, upon vouchers furnished the county treasurer by the board of commissioners of each county; *provided*, that if any county has heretofore paid or may hereafter by mistake pay into the state treasury on any such semiannual settlement more money than it should have paid according to the terms of this section, or under any special act relating to one county only containing similar provisions, such county may present its claim for such overpayment, as a claim against the state, to the state board of examiners for examination and allowance, and the state controller is hereby authorized to draw his warrants in favor of such county in refund of such overpayment in such amount as shall be allowed by such board of examiners; but if any such county shall feel aggrieved by any allowance made by said board of examiners on any such claim, an action may be prosecuted thereon for and on behalf of said county against the State of Nevada under and pursuant to the provisions of sections 5653-5665, Revised Laws of Nevada, 1912, which are hereby made applicable to any such action. *As amended, Stats. 1915, 70.*

COMPENSATION, FEES, SALARIES

An Act to provide compensation of township officers and to repeal all acts in conflict therewith.

Approved April 1, 1919, 395

Commissioners to fix compensation.

SECTION 1. The board of county commissioners of each county, during the month of July of any year in which an election of township officers is

held, shall fix the compensation of such officers for the ensuing term, and which shall be a salary or the fees as now allowed to such officers by existing enactments or as shall be fixed by subsequent enactments, and in case of failure of said boards to fix such compensation as above provided, then the compensation of such officers shall be the same as received by their immediate predecessors in office.

COUNTY LAW LIBRARIES

An Act to provide for the establishment, maintenance and operation of law libraries in the various counties of this state, and repealing all other acts and parts of acts in conflict therewith.

Approved March 25, 1913, 377

Libraries to be established.

SECTION 1. On the commencement in, or removal to, the district court of any county of this state of any civil action, proceeding or appeal, on filing the first papers therein, the clerk of said court shall set aside from the costs received such sum as shall be established by ordinance of the county commissioners, not exceeding five dollars in any case, for a fund which shall be designated as the "Law Library Fund," to be expended in the purchase of law-books and periodicals, and in the establishment and maintenance of a law library at the county-seat of said county, which law library shall be governed and controlled, and said fund be expended by the board of trustees hereinafter provided.

Funds, how kept.

SEC. 2. All moneys set aside as hereinbefore provided shall be paid by said clerk into the hands of the treasurer of his county, who shall keep the same separate and apart in the "Law Library Fund," and shall be drawn therefrom as hereinafter provided, but only to be used and applied to the purpose herein authorized.

Government of libraries.

SEC. 3. Any law library established under the provisions of this act shall be governed and managed by the "Board of Law Library Trustees" hereinafter provided.

Trustees for library.

SEC. 4. There shall be in every county of this state a board of law library trustees, consisting of five members, to be constituted as follows: In every county the district judge or judges of the district in which the county is situated shall be ex officio such a trustee; and the board of commissioners shall appoint a sufficient number of trustees to complete the board of five from members of the bar of the county to act as such trustees; such appointments shall be made at the first meeting of the board of commissioners after this act is approved, and the appointee shall serve until the first meeting of the board of commissioners in the succeeding January; and the said board shall, at any such meeting in each succeeding January, appoint such a trustee to serve for the term of one year.

No salary allowed.

SEC. 5. The office of trustee shall be honorary, without salary or other compensation.

Powers of trustees.

SEC. 6. Such board of trustees, by a majority vote of all their members, to be recorded in the minutes, with ayes and noes at length, shall have power:

First—To make and enforce all rules, regulations and by-laws necessary for the administration, government and protection of such library, and all property belonging thereto, or that may be loaned, devised, bequeathed or donated to the same.

Second—To remove any trustee who may neglect to attend the meetings of the board of trustees, or who may absent himself from such meetings, and fill all vacancies that may from any cause occur in the board.

Third—To define the powers and prescribe the duties of any and all officers, determine the number, and elect all necessary subordinate officers and assistants, and at their pleasure remove any officer or assistant.

Fourth—To purchase books, journals, publications, and other personal property.

Fifth—To order the drawing and payment, upon properly authenticated vouchers, duly certified by the president and secretary, of money from out of the law library fund, for any liability or expenditure herein authorized, and generally to do all that may be necessary to carry into effect the provisions of this act.

Sixth—To fix the salaries of the librarian, secretary and of other subordinate officers and assistants.

Seventh—To contract with any existing law library association to make use of its library for the purpose of a public law library, under proper rules and regulations to be prescribed by the board of trustees, either by lease or such other contract as may best carry the purposes of this act into effect.

Orders of trustees, how paid.

SEC. 7. The orders and demands of the trustees of any such public law library, when duly made and authenticated as above provided, shall be verified and audited by the auditing officer, and paid by the treasurer of such county out of the library fund properly belonging thereto, of which full entry and record shall be kept as in other cases.

Trustees to make report.

SEC. 8. The said board of trustees, on or before the first Monday in December of each year, shall make an annual report to the board of commissioners of their county, giving the condition of their trust, with full statements of all their property and money received, whence derived, how used and expended, the number of books, periodicals, and other publications on hand; the number added by purchase, gift or otherwise during the year; the number lost or missing, and such other information as might be of interest. A financial report, showing all receipts and disbursements of money, shall also at the same time be made by the secretary of the board of trustees, duly verified by his oath.

Room provided.

SEC. 9. The board of commissioners of any such county shall provide a library room for the use of such library, whenever such room may be demanded by such board of trustees.

Monthly meetings of trustees.

SEC. 10. The said board of trustees shall meet the first Tuesday of each month, and at such other times as they may appoint, at a place to be appointed for that purpose; and a majority of all their number shall constitute a quorum for business. They shall appoint one of their number as

president of their board. They shall elect a secretary, who shall keep a full statement and account of all property, money, receipts and expenditures, and a record and full minutes, in writing, of all their proceedings. They may appoint a librarian. The secretary may certify to such proceedings, or any part or portion thereof, under his hand, verified by an official seal, adopted and provided by the trustees for that purpose.

Privileges of library.

SEC. 11. Said library shall be free to the judiciary and county officials of said county, without payment of dues, and free to all inhabitants of said county, upon payment of such dues as may be ordained by said trustees, and under such rules and regulations as may be by them provided.

Secretary of state to furnish state publications.

SEC. 12. The secretary of state is hereby authorized and directed to transmit to the county clerk of each county of the state, for the use of said library, a copy of each and every publication which may hereafter be made by this state, and especially a copy of each report of the decisions of the supreme court, and of the statutes of this state; and also a copy of all such reports and statutes heretofore published.

State librarian to furnish certain volumes.

SEC. 13. The librarian of the state library is hereby authorized and directed to distribute among the law libraries herein provided for such duplicates of books as may be in the state library, and not needed for its own purpose.

Conflicting acts repealed.

SEC. 14. All acts and parts of acts in conflict with this act are hereby repealed; *provided, however*, that wherever a law library and a board of trustees to govern the same is already provided by law in any county, or city and county, in this state, this act shall not affect such library or board of trustees, or be considered a repeal of any legislation under which such library is established and now governed; *and provided further*, that it shall be discretionary with the board of commissioners of any county to provide by ordinance for the application of the provisions of this act to such county.

County commissioners to act.

SEC. 15. Whenever the board of commissioners in any county in this state which shall have adopted the provisions of this act and have established a law library, desire to discontinue such law library, they shall by ordinance so declare their intentions so to do, and shall provide in such ordinance that the books already in the library shall be transferred to and kept in the chambers of the judges of the district court of such county; and all moneys on hand in the library fund of such county shall be by the same ordinance transferred to the school fund of such county, and the office of the board of trustees of such law library shall be abolished. After such an ordinance shall take effect the county clerk of such county shall not set aside the fees provided for in section 1 of said act.

DEADLY WEAPONS

An Act declaring certain weapons and instruments when unlawfully carried, and also the carrying thereof, to be public nuisances, and providing for their confiscation and destruction.

Approved March 13, 1913, 116

Weapons declared nuisance.

SECTION 1. The unlawful carrying of a pistol, revolver or other firearm, or of an instrument or weapon of the kind usually known as blackjack, bludgeon, slung-shot, billy, sand-club, sand-bag, metal knuckles, or of a dagger, dirk, dangerous knife, or any other dangerous or deadly weapon, by any person save peace officers or persons while employed upon or traveling upon trains, stages or other public conveyances, or persons having permission from the board of county commissioners, attested by its clerk, of the county in which such weapon shall be carried, is hereby declared to be a nuisance, and such weapons are hereby declared to be nuisances; and when any one or more of the above-described instruments or weapons shall be taken from the possession of any person charged with the commission of any public offense or crime the same shall be surrendered to the sheriff of the county wherein the same shall be taken; except that in incorporated cities having a police force such instruments or weapons shall, when the possession thereof is detected by any member of such police force, be surrendered to the head of the police force or department of such incorporated city.

Weapons to be destroyed, when.

SEC. 2. The officer to whom the same may be so surrendered shall, except upon certificate of a judge of a court of record, or of the district attorney, that the nondestruction thereof is necessary or proper in the ends of justice, proceed at such time or times as he deems proper, and at least once in each year, to destroy or cause to be destroyed any and all such weapons or instruments in such manner and to such extent that the same shall be and become wholly and entirely ineffective and useless for the purpose for which destined and harmless to human life or limb; *provided*, that in the event of the acquittal of any such person any and all such weapons or instruments so taken from him as aforesaid shall thereupon be returned to him upon demand therefor.

ELECTIONS

1705-19. Repealed, Stats. 1913, 567.

1720. Repealed, Stats. 1913, 567.

1721-5. Repealed, Stats. 1913, 567.

1726-32. Repealed, Stats. 1913, 567.

1736-66. Repealed, Stats. 1913, 568.

1737. The original primary election law (Stats. 1909, 273), section 2 of which declares that the act should "not apply to special elections to fill vacancies, to the nomination of party candidates for presidential electors," and that it should not be construed as affecting

the right of political parties to hold conventions for the selection of delegates to national conventions, was amended by Stats. 1911, 334, to provide that the act should "not apply to special elections to fill vacancies to the nomination of party candidates for presidential electors," thus omitting the comma after the word "vacancies" as shown in the original act. Section 27 of the original act provided that vacancies occurring after the holding of any primary election should be filled by the party committee of the city, county, or state, as the case might be. The omission of the comma must be regarded as the result of a clerical error, otherwise two methods exist of selecting candidates to fill vacancies in the office of presidential electors, and hence electors chosen by convention of a political party were the only names entitled to go upon the official ballot. *State ex rel. Allen v. Brodigan*, 34 Nev. 486, 489, 490-492 (125 P. 699).

Under this section and sections 1835, 1836, providing that nominations made by any convention shall be certified by a certificate containing the name of each person nominated, and the designation of the party or principle which the convention represents, and providing that a certificate of nomination shall contain the name of the candidate to be nominated, with the other information required in the certificate of nominating conventions, the names of candidates nominated by petition are entitled to go on the official ballot with the designation of the party named in the certificate of nomination, and where a certificate of nomination for state offices, United States senator, representative in Congress, and presidential electors designates the candidates as nominees of the Progressive party, the secretary of state may not certify the candidates as independent, but must certify them as candidates of the Progressive party. *State ex rel. Springmeyer v. Brodigan*, 35 Nev. 35, 37, 50 (126 P. 680).

1740. See *State ex rel. Springmeyer v. Brodigan*, 35 Nev. 35, under section 1737.

1751. Cited, *Turner v. Fogg*, 39 Nev. 414 (159 P. 56).

1763. Under this section it was held, that where a contestant for the nomination for justice of the peace claimed that he was deprived of the nomination by mistakes in counting the ballots in certain precincts, he was entitled to initiate a contest by affidavit before the district court under this section and Rev. Laws, 1764, regardless of his right to a recount by the board of county commissioners as is provided for by Rev. Laws, 1513. *Brown v. Dunn*, 35 Nev. 166, 174, 175 (127 P. 81).

1764. See *Brown v. Dunn*, 35 Nev. 166, under section 1763.

This section was a special law relating to primary election contests, which controls as to them, the provisions of the civil practice act requiring that there shall be but one form of action and for the requisites of a complaint therein. *Id.*

1765. Cited, *Brown v. Dunn*, 35 Nev. 173 (127 P. 81).

1767-1832. Repealed, Stats. 1913, 568.

1795. This section is not repealed by a subsequent statute embodied in Rev. Laws, 5409, providing that a public record in a public office may be admitted as evidence by the certificate of the custodian, and ballots must remain in the custody fixed by law except when their removal is authorized by some court, and ballots are not admissible in evidence in an election contest under the certificate of the clerk when they have been out of his official custody subsequent to the making of the certificate, at least in the absence of a proper foundation for their admission having been laid. *State v. Baker and Josepha*, 35 Nev. 2, 6, 11-15 (126 P. 345; 129 P. 452).

Under this section, ballots and election returns duly deposited are public documents within Rev. Laws, 5409, providing that a public document in the custody of a public officer may be admitted in evidence by the certificate of the custodian that it is genuine and authentic. *Id.*

1833-62. Repealed, Stats. 1913, 568.

1834. See *State ex rel. Springmeyer v. Brodigan*, 35 Nev. 35, under section 1737.

1835. See *State ex rel. Springmeyer v. Brodigan*, 35 Nev. 35, under section 1737.

1836. Similar section (Cutting, 1693) cited, *Riter v. Douglass*, 32 Nev. 431, 439 (109 P. 444).

See *State ex rel. Springmeyer v. Brodigan*, 35 Nev. 35, under section 1737.

See *State ex rel. Miller v. Harmon*, 35 Nev. 189-191, under section 1838.

1838. Under Rev. Laws, 1836, and this section, a certificate signed by the requisite number of electors is not vitiated by signers subsequently signing another certificate nominating another person for the same office, but duplicate signatures are invalid as to the subsequent certificate. *State ex rel. Miller v. Harmon*, 35 Nev. 189-191 (127 P. 221; Ann. Cas. 1914C, 891).

1839. An application for mandamus to compel the secretary of state to accept and file certificates of nomination of presidential electors chosen at a Democratic party convention, brought before the expiration of the time provided for filing with the secretary of state certificates of nomination by convention, is premature, and must be denied. *State ex rel. Allen v. Brodigan*, 34 Nev. 487, 492 (125 P. 699).

It will be presumed that the secretary of state will do his duty in filing and accepting certificates of nomination when presented at the proper time. *Id.*

1840. Cited, *State ex rel. Springmeyer v. Brodigan*, 35 Nev. 45 (126 P. 680).

1844. Cited, *State ex rel. Springmeyer v. Brodigan*, 35 Nev. 45 (126 P. 680).

Similar section (Cutting, 1704) cited, *In Re Primary Ballots*, 33 Nev. 138 (126 P. 643).

1852. Under this section, the cross must be in the square after the name of the candidate, and a ballot with a cross after the name of the candidate and before the square is invalid. *State v. Baker and Josephs*, 35 Nev. 301, 316 (126 P. 345; 129 P. 452).

Under this section, the cross in voting for or against a constitutional amendment need not be placed in the square, and a ballot with a cross before the square and after the word "yes" or "no" in voting on a constitutional amendment is valid, as is also a ballot in which a single cross is placed in the square. *Id.*

1858. Under this section a ballot containing a cross after the names of the candidates for the same office cannot be counted for either. *State ex rel. Springmeyer v. Baker and Josephs*, 35 Nev. 301, 317 (126 P. 345; 129 P. 452).

Under this section a ballot containing a cross in the square following a blank space left for filling in the name of a candidate for an office for which no candidate has been nominated, or containing a name of a candidate written by the voter, must be rejected. *Id.*

1863. Repealed, Stats. 1913, 568.

1864. Repealed, Stats. 1913, 568.

1865. Repealed, Stats. 1913, 568.

1866-71. Repealed, Stats. 1913, 568.

1872. Repealed, Stats. 1913, 568.

1873-77. Repealed, Stats. 1913, 568.

1882-6. Repealed, Stats. 1913, 568.

1887-93. Repealed, Stats. 1913, 568.

1887. The provisions of Const. art. 4, sec. 17 (Rev. Laws, 275) does not render invalid the provision of Stats. 1917, 385, that electors in the military service may vote in accordance with this act, which was repealed by Stats. 1913, 568; revival by title not being prohibited; for an "amendment" is an alteration affecting a change in the draft, or form, or substance of a law already enacted, or of a bill proposed for enactment, but, when the legislative body attempts to revise, it thereby assumes to make additions or changes or corrections to alter or reform something then in force and effect, and "revision" in a legislative sense applies only to a measure, bill, or law then having existence, life, and force, and cannot, in the nature of things, apply to a nullified or repealed act; and the term

"revived," as applied to legislative proceedings, signifies the reconference of validity, force, and effect, at least the reconference of validity, force, and effect as the revised measure, law, or bill formerly possessed. *Maclean v. Brodigan*, 41 Nev. 468, 477, 479, 480 (172 P. 375).

This act is a compliance with Const. art. 2, sec. 3 (Rev. Laws, 252), and is not void for discrimination against electors in the naval service, or conscripted men in the military service, since "military service" includes every branch of service in either the army or the navy of the United States. *Id.*

1894-5. Repealed, Stats. 1913, 568.

1896-1900. Repealed, Stats. 1913, 568.

An Act regulating the nomination of candidates for public office in the State of Nevada.

Approved March 23, 1917, 276

Words and phrases defined.

SECTION 1. The words and phrases of this act shall, unless such construction be inconsistent with the context, be construed as follows:

(a) The words "November election," the regular general election for the election of state and county officers held on the first Tuesday after the first Monday in November of each even-numbered year.

(b) The words "primary" and "primary election" shall mean the election on the first Tuesday of September at which candidates are nominated for the November election.

(c) The words "judicial officers," any justice of the supreme court, any judge of a district court, or any justice of the peace; and the words "judicial office," the office filled by any judicial officer.

(d) The words "school officer," the state superintendent of public instruction, the regents of the University of Nevada, members of county boards of education, school trustees, and high-school trustees, and the words "school office," any office filled by any school officer.

(e) The words "township officer," the constable, and the words "township office," any office filled by such officer.

(f) The word "precinct" shall mean a district established under the law within which qualified electors vote at one polling-place.

(g) A political party is an organization of voters qualified to participate in a primary election in either of the two following ways:

First—Any organization of electors which, under a common name or designation at the last preceding November election, polled for any of its candidates equivalent of three per cent of the total vote cast for representative in Congress.

Second—Any organization of electors which, under a common name or designation, shall file a petition signed by qualified electors equal in number to at least three per cent of the entire vote cast at the last preceding November election for representative in Congress declaring that they represent a political party or principle, the name of which shall be stated, and that they desire to participate and nominate officers by primary. Said petition may also contain the platform of the party and shall be filed at least sixty days prior to the day of the primary. The names of the electors so petitioning need not all be on one petition, but may be in one or more petitions; but each petition shall be verified by at least one signer thereof to the effect that the signers are qualified electors of the state according to his best information and belief.

(h) This statute shall be liberally construed, so that the real will of the electors shall not be defeated by any informality or failure to comply with all provisions of law in respect to either the giving of any notice or the conducting of the primary election or certifying the results thereof.

How candidates nominated.

SEC. 2. All candidates for elective public office shall be nominated as follows:

(1) Candidates of a political party as defined by the preceding section shall be nominated at the primary election held in accordance with the provisions of this act.

(2) All other candidates for public office shall be nominated as hereinafter in this act provided.

This act shall not apply to special elections to fill vacancies, nor to the nomination of the officers of incorporated cities, nor to the nomination of officers for reclamation and irrigation districts; nor shall it be construed as restricting or affecting the rights of political parties to hold, under existing laws, which are hereby continued in force for all such purposes, primaries and conventions for the selection of delegates to national conventions.

September primary election.

SEC. 3. The September primary election shall be held in each precinct on the first Tuesday in September for the nomination of all party candidates to be voted for at the ensuing November election.

Nonpartisan offices—Secretary of state to send list—Clerk to publish.

SEC. 4. All judicial offices and all school offices are hereby designated as nonpartisan offices, and the names of candidates for nonpartisan offices shall appear alike on the ballots of each political party without any party designation or party name thereafter.

(1) At least sixty days before the time for holding the September primary election in 1918, and biennially thereafter, the secretary of state shall prepare and transmit to each county clerk a notice in writing designating the offices for which candidates are to be nominated at such primary election.

(2) Within ten days after receipt of such notice such county clerk shall publish so much thereof as may be applicable to his county, once in a newspaper published in such county.

Candidate must file declaration.

SEC. 5. The name of no candidate shall be printed on an official ballot to be used at a primary election, unless he shall qualify by filing a declaration of candidacy, or by an acceptance of a nomination and by paying a fee as provided in this act.

(a) Every candidate for nomination for any elective office not less than thirty days prior to the primary shall file a declaration or acceptance of candidacy in substantially the following form:

NOMINATION PAPER OF....., FOR THE
OFFICE OF.....

State of Nevada, }
County of..... } ss.

For the purpose of having my name placed on the official primary ballot as a candidate for nomination by the.....party as its candidate for the office of....., I, the undersigned....., do solemnly swear (or affirm) that I reside at No.....street, in the city (or town) of....., County of....., State of Nevada, and that I am a qualified elector of the election precinct in which I reside; that I am a member of the.....party; that I believe in and intend to support the principles and policies of such political party in the coming election; that I affiliated with such party at the last general election of this state, and I voted for a majority of the candidates of such party at the last general election (or did not vote at such

general election, giving reasons); that I intend to vote for a majority of the candidates of said party at the ensuing election for which I seek to be a candidate; that if nominated as a candidate of said..... party at said ensuing election I will accept such nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practice in campaigns and elections in this state; and that I will qualify for said office if elected thereto.

.....(Signature of candidate for office.)

Subscribed and sworn to before me this.....day of....., 19....., Notary public (or other officer authorized to administer an oath). *Provided*, that no candidate for a judicial office or a school office shall certify as to his party affiliations, and the names of such candidates shall be printed on the ballots of all parties under the heading of "nonpartisan candidates" for the respective offices.

(b) Ten qualified electors may, not more than sixty nor less than forty days prior to the September primary, file a designation of nomination designating any qualified elector as a candidate for the nomination for any elective office. When such designation shall have been filed it shall be the duty of the officer in whose office it is filed, to notify the elector named in such designation thereof. If the elector named in the designation shall, not less than thirty-five days prior to the primary, file an acceptance of such nomination and pay the required fee, he shall be a candidate before the primary in like manner as if he had filed a declaration of candidacy. If any such designation of nomination shall relate to a judicial or school office it may be signed by electors of any or all parties, but if it shall relate to any other office the signers shall all be of the same political party as the candidate so designated. The acceptance shall be in a form similar to that used by a candidate who files a declaration of candidacy.

Where declaration filed.

SEC. 6. The declaration of candidacy, the designation of nomination and the acceptance of nominations shall be filed as follows:

First—For United States senate, representative in Congress, state offices, and all other offices whose districts comprise more than one county, with the secretary of state.

Second—For district offices voted for wholly within one county, state senators, assemblymen, county, and township officers, with the county clerk.

Fees for filing.

SEC. 7. Any candidate filing a nomination paper as provided in section 5 shall pay to the filing officer a fee for such filing as follows:

If a candidate for nomination for any state office, or representative or United States senator in Congress, one hundred dollars.

If a candidate for any district office, fifty dollars.

If a candidate for any county office, twenty-five dollars.

If a candidate for state senator, twenty-five dollars.

If a candidate for assemblyman, twelve dollars and fifty cents.

If a candidate for justice of the peace, constable or other town or township office, ten dollars.

No filing fee shall be required from a candidate for an office the holder of which receives no compensation.

Disposition of filing fees.

SEC. 8. The county clerk shall immediately pay to the county treasurer all fees received from candidates. Immediately after the last day for filing nomination papers the secretary of state shall pay to the state treasurer all

fees received from candidates, and shall apportion the fees paid to him by each candidate equally among the counties within which such candidate is to be voted for and certify such apportionment to the state controller, who shall issue warrants on the state treasurer for the amount due each county, and the state treasurer shall pay the same.

Primary expenses public charge.

SEC. 9. The expense of providing all ballots, blanks, and other supplies to be used at any primary election provided for by this act, all expenses necessarily incurred in the preparation for or the conduct of such primary election, shall be paid out of the treasury of the county or state, as the case may be, in the same manner, with like effect, and by the same officers as in the case of an election.

Secretary of state to notify county clerks.

SEC. 10. At least thirty days before any September primary election preceding a November election the secretary of state shall transmit to each county clerk of any county a certified list containing the names and post-office address of each person for whom nomination papers have been filed in the office of such secretary of state, and who is entitled to be voted for in such county at such primary election, together with a designation of the office for which such person is a candidate and of the party or principles he represents; *provided*, that there shall be no party designation for candidates for judicial or school offices.

Notice of primary election—Form of notice and publication.

SEC. 11. Immediately upon receipt by the county clerk of the certified list of nominees from the secretary of state, as provided in the preceding section, the county clerk shall forthwith publish a notice of primary election, which notice shall be, in substance, as follows:

Notice is hereby given that on the first Tuesday, the.....day of September next, party primaries of the.....parties will be held for the nomination of party candidates of said parties for the following offices: (Naming the offices.) At the same time and in the same primary nominations will be made of nonpartisan, judicial and school officers as follows: (Naming the offices.) The polls will open at 8 a. m. and continue open until 6 p. m. of the same day. The polling-place (or places) is.....(Description and location of polling-places.)
....., County Clerk.

The foregoing notice shall name only the political parties in which there is a contest for nomination, and shall designate only the polling-place for the respective precincts; *provided*, that in towns or cities which have more than one polling-place the notice shall show the location and description of each.

The county clerk shall forward to each registry agent within the county three written or printed notices for each precinct or voting district, and it shall be the duty of the respective registry agents to whom such notices shall be delivered to post the same in three of the most public places in each precinct or voting district at least fifteen days prior to the date of the primary.

Said county clerk shall cause a notice in similar form and substance, eliminating his descriptions of the polling-places, to be published in a newspaper of general circulation, published in the county, once a week for two successive weeks prior to said primary.

Ballots—Paper furnished.

SEC. 12. All voting at primaries shall be by ballot. A separate official ballot for each party and for nonpartisan voters shall be printed and provided for use in each precinct, but such ballots must be alike in the designation of nonpartisan candidates. It shall be the duty of the county clerk of each county to provide such official printed ballots to be used at the primary. Such official ballots shall be printed on official paper furnished by the secretary of state in the manner provided in the general election laws. The names of all candidates who have filed the prescribed declarations or acceptance of candidacy shall be printed thereon.

(a) Official primary ballots shall be not less than twelve inches wide, and enough wider to conform to the requirements of the following provisions of this section, and as long as the herein prescribed captions, headings, party designations, directions to voters, and lists of names of candidates, properly subdivided according to the several offices to be filled, may require.

(b) Across the top of the ballot shall be printed in black-faced capital type, not smaller than forty-eight point, the words: "Official Primary Ballot." Beneath this shall be printed in not smaller than eighteen-point type the name of the party, or "Nonpartisan Ballot," and beneath this the name of the county and precinct, wherein such ballot is to be used, together with the date of such primary.

(c) At least three-eighths of an inch below the name of the county and precinct, as aforesaid, and the date of the primary, shall be printed in ten-point black-face type, double-leaded, the following: "Instructions to Voters: To vote for a candidate make a cross (X) in the square at the right of the name of the person for whom you desire to vote."

(d) The "Instructions to Voters" shall be separated from the lists of candidates and the designation of the several offices for which nominations are to be made by one light and heavy line or rule.

(e) The names of the candidates shall be grouped according to the office for which they are candidates and the names in each group shall be placed with the surnames first and arranged alphabetically and each group shall be preceded by the designation of the office for which the candidates seek nomination, and the words "Vote for one" or "Vote for two" or more, according to the number to be nominated. Such designation of the offices for which nominations are to be made and of the number of candidates to be nominated shall be printed in heavy-faced type, not smaller than eight-point. The word or words designating the office shall be printed flush with the left-hand margin, and the words "Vote for one" or "Vote for two" or more, as the case may be, shall extend to the extreme right of the column and over the voting square. The designation of the office and the directions for voting shall be separated from the names of the candidates by a light line.

(f) The names of the candidates shall appear on the ballot in heavy-faced capital type not smaller than eight-point, between lines or rules three-eighths of an inch apart. To the right of the names of the candidates shall be printed a light line or rule so as to form a voting space at least three-eighths of an inch on each side.

Each group of names of candidates shall be separated from the succeeding group by one light and one heavy line or rule.

(g) All voting at the primary under the laws of this state shall be by ballot and the respective tickets of all political parties shall be printed on separate ballots, and the election officers shall not deliver any ballot to any

elector other than the ballot containing the ticket of the party to which he belongs, as shown by the register; *provided*, that ballots showing names of nonpartisan candidates only, shall be furnished to voters who have registered for the primary without declaring any party affiliations.

(h) Where there is no party contest for any office the name of the candidate for party nomination shall be omitted from the ballot and shall be certified by the proper officer as a nominee of his party for such office.

(i) The county clerk shall determine the size and shape of the ballot in such a way as to conform to the provisions of this act, using two, three, four, or five columns as shall be most convenient. Party ballots shall have an extra heavy black vertical line between the column or columns on the left in which the names of candidates for party offices are printed and the column or columns on the right in which the names of candidates for nonpartisan offices are printed.

(j) In addition to the party ballots provided for in this section, the county clerk shall prepare and have printed a "Nonpartisan Primary Ballot," which shall be the same, except as to size thereof, as the other official primary ballots; *provided*, that the names of all party candidates shall be omitted therefrom.

Sample ballots.

SEC. 13. Not less than twenty-five days before the September primary each county clerk shall prepare sample ballots for such primary, which sample ballots may be smaller in dimensions, but shall be otherwise exact copies of the official ballot to be used at the primary. Such sample ballots shall be conspicuously marked with the words "Sample Ballot."

Such county clerk shall forthwith mail five copies of said sample ballot to each candidate who has filed with him a declaration or acceptance of candidacy and one copy to each candidate whose name has been certified to him by the secretary of state, to the postoffice address as given in such declaration, acceptance or certification, and shall post a copy of said sample ballot in a conspicuous place in his office, and shall mail to each registry agent one sample ballot for every four registered voters in such precinct.

On the fifteenth day before any primary the county clerk shall correct any errors or omissions in the official ballot and shall cause the same to be printed as provided in this act and shall cause the same to be furnished to the various precinct election officers in the manner provided by law for the distribution of ballots for the November election; *provided*, that the number of ballots furnished to each precinct shall be for each political party a number in the proportion of one hundred and ten ballots for each one hundred electors registered in such party; and the same ratio of nonpartisan ballots for electors who have registered for the primary without designating any party affiliation; *and provided further*, that he shall furnish to each precinct for each party and the nonpartisan voters a number of ballots greater by five than the number of voters registered in each class in the precinct. He shall also furnish to the election officers of each precinct sample ballots of each class, equal in number to one-fourth of the official ballots.

Election officers.

SEC. 14. The officers of primary elections shall be the same as provided by law for general elections, and such officers shall receive the same compensation for their services at primary elections as provided by law for general elections. It shall be the duty of the proper officers to furnish certified copies of the official register, together with the check-list for the election district, to one of the inspectors of election as now provided by law.

General election laws to govern.

SEC. 15. That the qualifications and regulations of voters at primary elections shall be subject to the same tests and governed by the same provisions of law and rules and regulations as are now prescribed by law for other elections, and the same officers who prepare and furnish registers for general elections shall prepare and furnish them for use at primary elections, and it shall be the duty of the proper officers to furnish a certified copy of the register for use at primary elections, which said register shall show the names of all voters entitled to vote at such elections. Said register shall be made by taking the names of all voters on the register on the fifteenth day preceding the primary election. Said registry agent shall be paid ten cents per name for certified copies of the register for use at the primary election.

Mode of voting.

SEC. 16. Any elector desiring to vote at any primary election shall give his name and address to the ballot clerk who shall immediately announce the same, but no ballot shall be delivered to any elector except such as has the right to vote as herein provided; such elector's right to vote may be challenged by any elector upon any of the grounds now allowed by law for a challenge of a right to vote at any general election, and upon the additional grounds that such elector has not registered, or his name does not appear upon the register as required by law, or that he does not belong to the political party designated upon the register, or that the register does not show that he designated his politics or the political party to which he belongs. All challenges shall be disposed of in the same manner as provided by law for general elections. The voter shall be instructed, if necessary, by a member of the board as to the proper method of marking and folding his ballot and he shall then retire to an unoccupied booth and without delay stamp the same with a rubber stamp provided for that purpose. If he shall spoil or deface a ballot he shall at once return the same to the ballot clerk, who shall cancel the same and deliver to him another ballot.

No elector shall be entitled to vote a party ballot at primary elections unless he has theretofore designated to the registry agents his politics or political party to which he belongs and has caused the same to be entered upon the register by such registry agents; *provided, however*, that no elector shall be denied the right to vote a nonpartisan ballot for judicial and school officers at such primaries.

Same.

SEC. 17. The voter shall designate his choice on the ballot of candidates of his party by stamping a cross (X) in the small square opposite the name of each candidate for whom he desires to vote. If he shall stamp more names than there are candidates to be nominated for any office, or if for any reason it is impossible to determine his choice for any office, his ballot shall not be counted for such office, but the rest of his ballot, if properly stamped, shall be counted.

No ballot shall be rejected for any technical error which does not render it impossible to determine the voter's choice for candidates, nor even though such ballot be somewhat soiled or defaced.

Same.

SEC. 18. When a voter has stamped his ballot he shall fold it so that its face shall be concealed, and hand the same to a member of the board in charge of the ballot-box. Such folded ballot shall be placed in the ballot-box in the presence of the voter, and the name of the voter checked upon the register as having voted.

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Duration of election.

SEC. 19. The polls shall open at 8 a. m. and close at 6 p. m., and no adjournment or intermission whatever shall take place until the polls shall be closed and until all the votes cast at such polls shall be counted and the result publicly announced, but it shall not be deemed to prevent any temporary recess while taking meals or for the purpose of other necessary delay; *provided*, that no more than two members of the board shall at any time be absent from the polling-place.

Canvass of votes.

SEC. 20. As soon as the polls are finally closed the judges must immediately proceed to canvass the votes cast at such primary election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed, and the result thereof declared. Except as hereinafter provided, the canvass shall be conducted, completed and returned as provided by law.

The number of ballots agreeing or being made to agree with the number of names on the lists, as now provided by law, the board must take the ballots from the box and count all the votes cast for each candidate for the several offices and record the same in duplicate tally-book.

Commissioners to canvass.

SEC. 21. As soon as the returns from all the precincts in any county have been received, the board of county commissioners shall meet forthwith and proceed to canvass returns, but such meeting shall be held not later than the tenth day following such primary. The canvass, when begun, shall continue until completed.

The clerk of the board must, as soon as the result is declared, enter upon the records of such board a statement of such result, which statement shall contain the whole number of votes cast for each candidate of each political party, and for each candidate for a nonpartisan office.

The secretary of state shall, not later than twenty days after any primary, compile the returns for all candidates voted for in more than one county, and for all candidates for the assembly, state senate, representative in Congress, United States senate, and judicial offices, except justices of the peace, and shall make out and file in his office a statement thereof.

Who nominated.

SEC. 22. The party candidate who receives the highest vote at the primary shall be declared to be the nominee of his party for the November election. In the case of an office to which two or more candidates are to be elected at the November election, those party candidates equal in number to positions to be filled who receive the highest number of votes at the primary shall be declared the nominees of their party.

In the case of a nonpartisan office to which only one person can be elected at the November election, the two candidates receiving the highest number of votes shall be declared to be the nonpartisan nominees.

In the case of a nonpartisan office to which two or more persons may be elected at the November election, those candidates equal in number to twice the number of positions to be filled, who receive the highest number of votes shall be declared to be the nonpartisan nominees for such office.

County platforms—County central committees.

SEC. 23. At 2 p. m. on the second Tuesday after any September primary the county candidates of the respective political parties shall meet at the courthouse at the county-seat of the county, adopt a county platform and elect a county central committee of not more than twenty members. Such

county committeemen shall hold office for two years, and until their successors are selected. Vacancies in the committee may be filled by the remaining members. The county central committees shall choose their officers, and may select an executive committee with all the powers of the committee itself.

County central committees now in existence shall exercise their powers and perform the duties herein prescribed until their successors are chosen in accordance with the provisions of this act.

State platforms and central committees.

SEC. 24. On the twenty-first day after any September primary the party candidates for state offices, and for senate and assembly, and the hold-over state senators shall meet at the state capital at 2 o'clock p. m. in convention. They shall adopt a state platform and elect a state central committee and the chairman thereof.

Each county shall be entitled to as many committeemen as the county has members of the assembly under the apportionment act then in effect; *provided*, that each county shall be entitled to at least two committeemen.

The state central committee shall meet at such time and place as shall be designated by the body selecting it, shall select its own officers, except the chairman, and may select an executive committee with such powers as may be given by resolution of the state committee.

The party platform must be completed and published within two days after the opening of the convention.

Vacancies, how filled.

SEC. 25. Vacancies occurring after the holding of any primary election shall be filled by the party committee of the county, district or state, as the case may be.

In the event of vacancies in nonpartisan nominations, the vacancy shall be filled by the person who received the next highest vote for such nomination in the primary for such office. If there be no such person then the vacancy may be filled by a petition signed by qualified electors equal in number to five per cent of the total vote cast for representative in Congress at the last preceding general election in the county, district or state, as the case may be. Such petition shall be filed on or before fifteen days before the November election.

Tie vote, how decided.

SEC. 26. In the case of a tie vote, if for an office to be voted for wholly within one county, the board of county commissioners shall forthwith summon the candidates who have received such tie votes to appear before such board, and such board in the presence of such candidates shall determine the tie by lot. In the case of a tie vote for an office to be voted for in more than one county, such tie shall be determined by lot by the secretary of state in the presence of the candidates.

Errors or omissions, how cured.

SEC. 27. Any error or omission occurring or about to occur in the placing of any name on the official primary election ballot, or any error, omission, or wrongful act occurring or about to occur by reason of any act of any judge or clerk of a primary, or any other officer having to do with the election, registration, or canvassing, may be corrected by application of any qualified elector, upon affidavit, to any district court, or to the supreme court or any justice thereof. Notice of the hearing of said proceeding shall be given to the officer or person interested, and said hearing shall take precedence over any other business.

Contest of nomination, how conducted.

SEC. 28. Any candidate at a primary election desiring to contest the nomination of another candidate for the same office may proceed within five days after the completion of the canvass as provided in section 21 of this act. And the contestee shall be required by the order of such justice of the supreme court or judge of the district court to appear and abide the further order of the court.

Neglect of filing officer; punishment.

SEC. 29. Any officer in whose office any nomination paper has been properly filed, who shall wrongfully either suppress, neglect, or fail to cause the proper filing thereof to be noted at the proper time and the proper place, shall be guilty of a misdemeanor, and upon trial and conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. Any act or omission declared to be an offense by the general laws of this state concerning primaries and elections shall also in like case be an offense concerning primary elections as provided for by this act, and shall be punished in the same manner and form as therein provided, and all penalties and provisions of the law governing elections, except as herein otherwise provided, shall apply in equal force to primary elections as provided for by this act.

National candidates.

SEC. 30. Party candidates for United States senator, for representative in Congress, and for presidential elector shall be nominated under the provisions of this act, and in like manner by direct primary, as state officers are nominated.

Independent nominations, how made.

SEC. 31. Candidates for public office, other than party candidates, shall be nominated in the manner following:

A certificate of nomination shall be signed by electors within the state, district, or political subdivision for which the candidates are to be presented, equal in number to at least ten per cent of the entire vote cast at the last preceding general election in the state, district, or political subdivision for which the nomination is made; *provided*, that such certificate shall contain the signatures of at least five electors. Said signatures need not all be appended to one paper, but each signer shall add to his signature his place of residence. One of the signers of each such certificate shall swear that the statements therein made and the signatures therein set forth are true to the best of his knowledge and belief. The certificate of nomination herein provided shall state the name of the principle, if any, which the person nominated by petition represents, but in so doing the name of no political party as defined by this act existing at the last preceding general election shall be used.

Such certificates of nomination for officers to be voted for by the electors of the entire state or by districts composed of two or more counties shall be filed with the secretary of state; all others shall be filed with the clerk of the county wherein the officers are to be voted for.

Such certificate of nomination as provided in this section shall be filed at least ten days before the primary election, and no person shall be nominated by such certificate or petition who has been a candidate before any primary of any political party as herein defined.

No certificate of nomination shall contain the name of more than one candidate for each office to be filled.

Every candidate nominated by petition shall, at the time of the filing of his petition or certificate, pay to the filing officer the same fee as is provided to be paid by candidates at the primary election of political parties as provided in section 7 of this act.

No nomination for judicial or school office shall be under the provisions of this section, but all such candidates shall be nominated at the primary election.

Masculine gender includes feminine.

SEC. 32. The pronoun "he" used herein shall be construed and intended to mean he or she, and the masculine herein used shall include the feminine.

Previous act repealed.

SEC. 33. An act regulating the nomination of candidates by political parties, providing for holding of primaries and conventions and regulating the manner of nominating candidates by petition, approved March 29, 1915, and all acts and parts of acts in conflict herewith are hereby repealed.

An Act to limit expenditures for campaign and election purposes to candidates, their political agents, and managing committees of political parties; to prescribe the manner of appointment of such agents; to limit the contributions, expenditures and liabilities of candidates, political agents and managing committees of political parties; to define, prohibit and punish corrupt and illegal practices in connection with or relative thereto at primary, special and general elections; to secure and protect the purity of the ballot; to prohibit the use of conveyances to carry voters to the polls; to prohibit the peddling or distributing of liquors and cigars by candidates for office; to prohibit and punish the making, publication and circulation of false charges and statements against candidates, the doing of any act tending to deceive or interfere with the voter; and to provide for furnishing information to electors.

Approved March 31, 1913, 476

Certain acts prohibited.

SECTION 1. In all political campaigns in this state conducted for the purpose of nominating or electing candidates to office, no sum of money shall be paid, and no expenses incurred, and no workers employed by any person except the candidate, or his duly appointed political agents, or the regularly constituted committees of the party, of which the candidate is a nominee.

Candidate may appoint agent.

SEC. 2. A candidate may appoint a number of political agents not exceeding one for each county in the state. Such appointment shall be in writing, giving the full name of the agent, and his postoffice and residence address and state the maximum to be expended and liability to be incurred by such agent, and shall be signed by the candidate; such appointment by a candidate for a state office, including candidates for the office of senator of the United States, and representative in Congress, shall be filed with the secretary of state. Such appointments by other candidates shall be filed with the county clerk or clerks of the counties wherein the candidates seek office. No political agent shall have authority to pay money, incur expenses, or employ workers, or do other acts for or on behalf of any candidate, until after his said appointment is made and filed as herein provided.

Agent's authority limited.

SEC. 3. No political agent shall procure, or pay out, any money, except the money of his principal, nor incur any expenses, except on the credit of

the secretary of state five days before, and again within fifteen days after the election. Similar accounts shall be kept by every person who in the aggregate receives or expends money or incurs liability to the amount of more than fifty dollars, for political purposes, and by every political agent and candidate. Such accounts shall cover all transactions in any way affecting or connected with the political canvass, campaign, nomination or election concerned. Every person receiving or expending money or incurring liability by authority or in behalf of or to promote the success or defeat of such committee, agent, candidate, or other person or political party or organization, shall, on demand, and in any event within fourteen days after such receipt, expenditure or incurrance of liability, give such treasurer, agent, candidate, or other person on whose behalf such expenses or liability was incurred, detailed account thereof with proper vouchers. Every payment, except payments less in the aggregate than five dollars to any person, shall be vouched for by a receipted bill stating the particulars of expense. Every voucher, receipt and account hereby required shall be a part of the accounts and files of such treasurer, agent, candidate or other person, and shall be preserved by the public officer with whom it shall be filed for at least six months after the filing of the same, and if any contest for office or criminal prosecution is instituted wherein the same may become necessary or material, until the final determination of such contest or prosecution, as the case may be. Any person not a candidate for any office or nomination who expends money or anything of value to any amount, or incurs indebtedness, greater than fifty dollars, in any campaign for nomination or election, to aid in the election or defeat of any candidate or candidates, or party ticket, or measure before the people, shall within ten days before and ten days after the election in which said money or valuable thing was expended, or indebtedness incurred, file with the secretary of state, in the case of a measure voted upon by the people, or of state or district offices for districts composed of one or more counties, or with the county clerk for the county offices, an itemized statement of such receipts, expenditures and indebtedness and vouchers for every sum paid in excess of five dollars, and shall at the same time deliver to the candidate or treasurer of the political organization whose success or defeat he has sought to promote, a duplicate of such statement and a copy of such vouchers. The books of account of every treasurer of any political party, committee or organization, during an election campaign, shall be open at all reasonable office hours to the inspection of the treasurer and chairman of any opposing political party or organization, or their representative appointed in writing, for the same electoral district or territory; and his right of inspection may be enforced by a writ of mandamus by any court of competent jurisdiction. Such treasurer shall preserve such book of accounts as herein provided for the preserving of vouchers, receipts and accounts by certain public officers.

Duty of secretary of state.

SEC. 10. The secretary of state shall, at the expense of the state, furnish to the county clerk, copies of this act as a part of the election laws. In the filing of a nomination petition or certificate of nomination, the secretary of state, in the case of state and district offices for districts composed of one or more counties, and county clerks for county offices, shall transmit to the several political committees, and to political agents, as far as they may be known to such officer, copies of this act, and also to any other person required to file a statement, such copies shall be furnished upon application therefor. Upon his own information, or at the written request of any voter, said secretary of state shall transmit to any other person

believed by him or averred to be a candidate, or who may otherwise be required to make a statement, a copy of this act.

Officers shall inspect accounts.

SEC. 11. The several officers with whom statements are required to be filed, shall inspect all statements of accounts and expenses relating to nominations and elections filed with them within ten days after the same are filed; and if upon examination it appears that any person has failed to file a statement as required by law, or if it appears to any such officer that the statement filed with him does not conform to law, or upon complaint in writing by a candidate or by a voter that a statement filed does not conform to law or to the truth, or that any person has failed to file a statement which he is by law required to file, said officer shall forthwith in writing notify the delinquent person. Every such complaint filed by a citizen or candidate shall state in detail the grounds of objections, shall be sworn to by the complainant and shall be filed with the officer within sixty days after the filing of the statement or amended statement. Upon the written request of a candidate or any voter, filed within sixteen days after any convention, primary or nominating election, said secretary of state, or county clerk, as the case may be, shall demand from any specified person or candidate a statement of all his receipts, disbursements and liabilities, and a statement of all promises made by him, in connection with or in any way relating to the nomination or election concerned, whether it is an office to which a salary or compensation is attached or not, and said person shall thereupon be required to file such statement and to comply with all the provisions relating to statements herein contained, and mandamus shall lie to compel obedience to such requirements. Whoever makes a statement required by this act shall make oath attached thereto that it is in all respects correct, complete, full and true, to the best of his knowledge and belief, and said verification shall be substantially in the form herein provided.

Failure to file statement, how punished.

SEC. 12. Upon the failure of any person to file a statement within ten days after receiving notice under the preceding section, or if any statement filed as above discloses any violation of any provision of this act relating to corrupt practices in elections, or in any other provision of the election laws, the secretary of state or the county clerk, as the case may be, shall forthwith notify the attorney-general and the district attorney of the district where said violation occurred, and shall furnish them with copies of all papers relating thereto, and said district attorney shall within sixty days thereafter examine every such case, and if the evidence seems to him to be sufficient under the provisions of this act he shall in the name of the state forthwith institute such civil or criminal proceedings as may be appropriate to the facts. Any such proceeding may be instituted by the attorney-general and it shall be his duty to assist in the prosecution of such violations with regard to all offices except county offices, and in case of county offices, he may, if he believes the facts warrant it, and the district attorney fail to prosecute, institute such proceedings as he may believe the facts justify.

District court to have jurisdiction.

SEC. 13. The district court of the county in which any statement of accounts and expenses relating to nominations and elections should be filed, or where the offense is committed, or the defendant resides, unless herein otherwise provided, shall have original jurisdiction of all violations

of this act, and may compel any person who fails to file such a statement which conforms to the provisions of this act in respect to its truth, sufficiency in detail or otherwise to file a sufficient statement, upon the application of the attorney-general or of the district attorney, or the petition of a candidate or of any voter.

All statements to be preserved at least six months.

SEC. 14. All statements filed in pursuance of this act shall be preserved by the officer with whom filed for at least six months, and if a contest or action of any kind, civil or criminal, shall be instituted, until the same is finally disposed of. They shall be public records subject to public inspection, and it shall be the duty of the officers having custody of the same to give certified copies thereof in like manner as of all other public records. The totals of each statement, filed with him, with the name of the person or candidate filing it, shall be published in the next annual report of the secretary of state or the county clerk, as the case may be.

Fictitious names must not be used.

SEC. 15. No person shall make a payment of his own money or of any other person's money to any other person in connection with the nomination or election in any other name than that of the person who in truth supplies such money; nor shall any person knowingly receive such payment or enter or cause the same to be entered in his accounts or records in any other name than that of the person by whom it was actually furnished; *provided*, if money be received from the treasurer of any political organization it shall be sufficient to enter the same as received from such treasurer.

Promises of appointment not to be made.

SEC. 16. No person shall, in order to aid or promote his nomination or election, directly or indirectly, himself or through any other person, promise to appoint another person, or promise to secure or aid in securing the appointment, nomination or election of another person to any public or private position or employment, or to any position of honor, trust or emolument, except that he may publicly announce or define his choice or purpose in relation to any election in which he may be called to take part, if elected, and if he is a candidate for nomination or election as a member of the legislature, he may pledge himself to vote for the people's choice for United States senator, or state what his action will be on such vote.

Campaign contributions prohibited.

SEC. 17. No holder of any public position or office other than an office filled by the voters, shall pay or contribute to aid or promote the nomination or election of any other person to public office. No person shall invite, demand or accept payment or contribution from such holder of a public position or office for campaign purposes.

Appointive officer cannot be delegate to convention.

SEC. 18. No holder of a public position other than an office filled by the voters shall be a delegate to a convention for the election district that elects the officer or board under whom he directly or indirectly holds such position, nor shall be a member of a political committee for such district.

Prohibition will not lie to restrain the county clerk from placing upon the official ballot the name of a nominee for justice of the peace selected by the county central committee to fill the vacancy upon the death of the original nominee, because the chairman of the committee who held three proxies, was disqualified under this section, being the holder of an appointive public office, for the chairman was at least a de facto officer, and his right to

the office cannot be tested by prohibition against another officer. *State ex rel. Busteed v. Harmon*, 38 Nev. 5, 6 (143 P. 1183).

One purporting to act as a member of a county central committee of a political party, and who held proxies of other members, is at least a *de facto* officer although disqualified by this section, because the holder of an appointive public office; a "*de facto* officer" being one whose acts, though not those of a lawful officer, the law upon principles of policy and justice will hold valid, because of the circumstances under which the acts are for the benefit of third persons. *Id.*

Proxies not bought or sold.

SEC. 19. No person shall invite, offer or effect the transfer of any convention, caucus or committee credential in return for any payment of money or other valuable thing, or appointment to any position whatsoever.

Payment for withdrawing prohibited.

SEC. 20. No person shall pay, or promise to reward another in any manner or form for the purpose of inducing him to be or refrain from being or cease being a candidate for office, and no person shall solicit any payment, promise or reward from another for such purpose.

Contributions not to be asked of candidate.

SEC. 21. No person shall demand, solicit, ask or invite any payment or contribution for any religious, political, charitable, social or other cause or organization supposed to be primarily or principally for the public good, from a person who seeks to be or has been nominated or elected to any office; and no such candidate or elected person shall make any such payment or contribution if it shall be demanded or asked during the time he is a candidate for nomination or election to or while an incumbent of an office. No payment or contribution for any purpose shall be made a condition precedent to the putting of a name on any caucus or convention ballot or nomination or petition, or to the performance of any duty imposed by law on a political committee. No person shall demand, solicit, ask or invite any candidate to subscribe to the support of any club, church, or organization of any kind, to buy tickets to any entertainment or ball, or to subscribe for or pay for space in any book, program, periodical or other publication; if any candidate shall make any such payment or contribution with hope or intent to influence the result of the election, he shall be guilty of a corrupt practice; but this section shall not apply to the solicitation of any business advertisement for insertion in any periodical in which such candidate was regularly advertising prior to his candidacy, nor to ordinary business advertisements, nor to his regular payment to any organization, religious, charitable or otherwise, of which he may have been a member, or to which he may have been a contributor, for more than six months before his candidacy, nor to ordinary contributions at church services.

Corporations prohibited from contributing.

SEC. 22. No corporation, and no person, trustee or trustees, director or directors, owning, holding, or representing the majority of the stock of a corporation carrying on the business of a bank, savings bank, cooperative bank, trust company, trust trustee, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, water, sewer, cemetery, or crematory company, or any company having the right to take or condemn land or to exercise franchises in public ways granted by the state or by the county, city, or town, or mining company, shall pay or contribute any money or other consideration, or employ politicians, workers, speakers, advertisers in order

to aid, promote or prevent the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party, organization or person. No person shall solicit or receive such payment or contribution from such corporation or such holders, owners or representatives of a majority of the stock in any of such corporations.

"Treating" prohibited.

SEC. 23. Any person or candidate who shall, either by himself or by another person, either before or after an election, or while such person or candidate is seeking a nomination or election, directly or indirectly, give or provide, or pay, wholly or in part, the expenses of giving or providing any meat or drink or other entertainment or provision, clothing, liquors, cigars or tobacco, to or for any person for the purpose of or with intent or hope to induce that person or any other person to give or refrain from giving his vote at such election to or for any candidate or political party, ticket, or measure before the people or on account of such person or any other person having voted or refrained from voting for any candidate or the candidates of any political party or organization or measure before the people, or being about to vote or refrain from voting at such election, shall be guilty of treating. Every elector who accepts or takes any such meat, drink, entertainment, provision, clothing, liquors, cigars or tobacco, shall also be guilty of treating; and such acceptance shall be a ground for challenge to his vote and rejecting his vote on a contest.

Force or threats prohibited.

SEC. 24. Every person who shall directly or indirectly, by himself or any other person, in his behalf, make use of or threaten to make use of any force, coercion, violence, restraint, or undue influence, or inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person, expose or publish, or threaten to expose or publish, or publish any fact concerning a person in order to induce or compel such person to vote or refrain from voting for any candidate or the ticket of any political party or any measure before the people; and every person who, otherwise than by public speech or print, shall, either directly or indirectly, urge, persuade or command any voter to vote, or refrain from voting for or against any candidate or political party ticket or measure submitted to the people, in the interest of any church, religious or other corporation or organization, or who shall by abduction, duress or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election, or shall thereby compel, induce or prevail upon any elector to give or refrain from giving his vote, or shall discharge, or change the place of any employee with the intent and for the purpose of impeding or preventing the free exercise of the franchise by such voters, shall be guilty of undue influence, and shall be punished as for a corrupt practice.

Betting money on election prohibited.

SEC. 25. Any candidate who, before or during any election campaign, makes any bet or wager of anything of pecuniary value, or in any manner becomes a party to any such bet or wager on the result of the election in this state, or in any part thereof, or on any event or contingency relating to any pending election, or who provides money or other valuable thing to be used by any person in betting or wagering upon the results of any pending election, shall be guilty of a corrupt practice. Any person who makes any bet or wager of anything of pecuniary value on the result of such election in this state or in any part thereof, or of any pending election, or on any event or contingency relating thereto, shall be guilty of a corrupt

practice, and in addition thereto any such act shall be a ground of challenge against his right to vote.

Applying for ballot in name of another a felony.

SEC. 26. Any person shall be deemed to be guilty of the offense of personation who, at any election, applies for a ballot in the name of some other person, whether it be that of a person living or dead, or of a fictitious person, or who, having voted once at an election, applies at the same election for a ballot in his own name; and on conviction thereof such person shall be punished by imprisonment in the penitentiary at hard labor for not less than one nor more than three years.

Corrupt practices defined.

SEC. 27. Any person shall be guilty of a corrupt practice within the meaning of this act if he expends any money for election purposes contrary to the provisions of any statute of this state, or if he is guilty of treating, undue influence, personation, the giving or promising to give, or offer of any money or valuable thing to any elector with intent to induce such elector to vote for or refrain from voting for any candidate for public office, or the ticket of any political party or organization, or any measure submitted to the people, at any election, or to register or refrain from registering as a voter at any state, district, county, city, town, village or school district election for public offices or on public measures. Such corrupt practice shall be deemed to be prevalent when instances thereof occur in different election districts similar in character and sufficient in number to convince the court before which any case involving the same may be tried that they were general and common, or where pursuant to a general scheme or plan.

Payment of transportation or other expenses prohibited.

SEC. 28. It shall be unlawful for any person to pay another for any loss or damage due to attendance at the polls, or in registering, or for the expense of transportation to or from the polls, or for the purpose of registering. No person shall pay for personal service to be performed on the day of a caucus, primary, convention, or any election, for any purpose connected therewith, tending in any way, directly or indirectly, to affect the result of the election, except for the hiring of not to exceed two persons for each polling precinct, whose sole duty shall be to act as challengers and watch the count of the official ballots.

Employee of corporation culpable, when.

SEC. 29. Any officer, agent, servant, employee or representative of a corporation, acting for such corporation, while without the State of Nevada, or any individual, while without the state, acting in behalf of himself, or another or others, who shall do any one or more of the acts and things prohibited by this act, shall be guilty of a corrupt practice and punished accordingly.

Conveyances must not be provided for voters.

SEC. 30. No individual or committee representing any political party or candidate for office, and no candidate for office, either in a general, special or primary election, shall furnish or provide any buggy, carriage, wagon, cart, automobile, or conveyance of any kind or character whatsoever for the taking or transporting of a voter or voters to the polls, nor shall any other person or corporation furnish any of said conveyances for any such purpose in behalf of any candidate, political party, organization or measure; *provided*, that any two or more political parties may cooperate

in the furnishing of conveyances for the purpose of taking sick or crippled persons to the polls, but when so furnished they shall have neither banner nor worker upon them. Any person violating this section shall be guilty of a corrupt practice.

Cigars, liquor and candy prohibited.

SEC. 31. No candidate for office, either in a general, special or primary election, shall peddle or distribute cigars, liquors or confectioneries to any person while such candidate, nor shall any person or persons in behalf of a candidate peddle or distribute cigars, tobacco, liquors or confectioneries. Any person violating this section shall be guilty of a corrupt practice.

Witnesses not exempt from testifying.

SEC. 32. No person, otherwise competent as a witness, shall be exempt from testifying as such, concerning any violation of this act, on the ground that such testimony may incriminate him; *provided*, no prosecution shall afterwards be had against any such witness for any offense concerning which he testifies.

Certain inhibitions concerning newspapers.

SEC. 33. No publisher of a newspaper or other periodical shall insert, either in its advertisement or reading columns any paid matter which is designed or tends to aid, injure or defeat any candidate or political party or organization, or measure before the people, unless it is stated therein that it is paid advertisement, and the name of the chairman or secretary, or the names of the other officers of the political or other organization inserting the same, or the name of the person who is responsible therefor, if any, appear in such advertisement in the nature of a signature. No person shall directly or indirectly pay or offer any inducement to the owner, editor, publisher or agent of any newspaper or other periodical to induce him to editorially advocate or oppose any candidate for nomination or election, and no such owner, editor, publisher or agent of any newspaper or periodical shall accept such payment or other inducement. Any person who shall violate any of the provisions of this section shall be punished as for a corrupt practice.

Regulations as to printed matter.

SEC. 34. It shall be unlawful to write, print, or circulate through the mails or otherwise any letter, circular, bill, placard or poster relating to any election or to any candidate at any election, unless the same shall bear on its face the name and address of the author, and of the printer and publisher thereof; and any person writing, printing, publishing, circulating, posting, or causing to be written, printed, circulated, posted or published any such letter, bill, placard, circular, or poster, as aforesaid, which fails to bear on its face the name and address of the author and of the printer and publisher, shall be guilty of an illegal practice, and shall, on conviction thereof, be punished by a fine of not less than ten dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than eight months, or by both such fine and imprisonment. If any letter, circular, poster, bill, publication or placard shall contain any false statement or charges, whether such charges be direct or by innuendo, insinuation or implication, reflecting on any candidate's character, morality or integrity, the author thereof and every person printing or knowingly assisting in the circulation thereof, shall be guilty of political criminal libel, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one nor more than three years. If the person charged with such crime shall, on his trial, prove that the statements made were true, or that he had reasonable ground to believe such

charge was true, and did believe it was true, and that he was not actuated by malice in making such publication, it shall be a sufficient defense to such charge. But in the event the defense is that defendant had reasonable ground to believe the charge was true, and did believe it to be true, as a part of his defense, he shall also prove that, at least five days before such letter, circular, poster, bill or placard containing such false statement or statements was printed or circulated, he caused to be served personally upon the candidate to whom it relates a copy thereof in writing, and calling his attention particularly to the charges contained therein, and that, before printing, publishing, or circulating such charges, he received and read any denial, defense or explanation, if any, made or offered to him in writing by the accused candidate within five days after the service of such charge upon the accused person.

Penalty for failure to file statement of expenses.

SEC. 35. The name of the candidate chosen at a primary nominating election or otherwise, shall not be printed on the official ballot for the ensuing election unless there has been filed by or on behalf of said candidate the statements of accounts and expenses relating to nominations required by this act, as well as a statement of his political agents and by his political committee or committees in his behalf, if public records disclose the existence of such agents, committee or committees. The officer, or board entrusted by law with the preparation of the official ballots for any election shall, as far as practical, warn candidates of the danger of omission of their names by reason of this provision, but delay in making any such statement beyond the time prescribed shall not preclude its acceptance or prevent the insertion of the name on the ballot if there is reasonable time therefor after the receipt of such statements. Any such vacancy on the ballot shall be filled by the proper committee of the political party affected in the manner authorized by law, but not by the use of the name of the candidate who failed to file such statements. No person shall receive a certificate of election until he shall have filed his statements required by this act.

Unlawful to be, or refrain from being, candidate for consideration.

SEC. 36. It shall be unlawful for any person to accept, receive or pay money or other valuable consideration for becoming or refraining from becoming a candidate for nomination or election. Upon complaint made to any district court, if the judge shall be convinced that any person has sought the nomination or seeks to have his name presented to the voters as a candidate for nomination by any political party, in violation of the provisions of this section, the judge shall forthwith issue a writ of injunction restraining the officer or officers whose duty it is to prepare the official ballots for such nominating election from placing the name of such person thereon as a candidate for nomination to any office. In addition thereto the court shall direct the district attorney to institute criminal proceeding against such person or persons for corrupt practice, and upon conviction thereof he and any person or persons paying or giving any such valuable consideration for becoming or refraining from becoming a candidate shall be punished by a fine of not more than one thousand dollars, or imprisoned in the county jail for not more than one year, or both.

Not to be deprived of rights for trivial offense.

SEC. 37. Where, upon the trial of any action or proceeding for the contest of the right of any person declared nominated or elected to office, or to annul or set aside such nomination or election, or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate, or with his knowledge or consent, or was

committed without his sanction or connivance, and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate, or that the offense or offenses complained of were trivial, unimportant and limited in character, and that in all other respects his participation in the election were free from such offense or illegal acts, or that any act or omission of the candidate arose from inadvertence, or from accidental miscalculation, or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith, and under the circumstances it seems to the court to be unjust that the said candidate shall forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of such candidate shall not by reason of such offense or omission complained of be void, nor shall the candidate be removed or deprived of his office.

When deemed usurper.

SEC. 38. Any person nominated or elected to any office in the state who has been guilty of a corrupt practice, or violated the provisions of this act, except as provided in the preceding section, shall forfeit such nomination or office to which he has been so nominated or elected and thereafter if he obtains possession of such office shall be deemed a usurper and upon the trial of any action or proceeding for the contesting of the rights of any person declared to be nominated to an office, or to annul or set aside such election, or to remove any person from his office, it shall be proven that such person was guilty of any corrupt practice, illegal act, or undue influence in or about such nomination or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only exception to this judgment shall be that provided in section 37 of this act; such judgment shall not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts.

District attorney and attorney-general to act.

SEC. 39. If any district attorney shall be notified by an officer or other person of any violation of any of the provisions of this act within his jurisdiction, it shall be his duty forthwith to notify the attorney-general and to diligently inquire into the facts of such violation, and if there be reasonable ground for instituting a prosecution, it shall be the duty of such district attorney to file a complaint or information in writing before a court of competent jurisdiction, charging the accused person with such offense; if any district attorney shall fail or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit his office. It shall be the duty of the district attorney, under penalty of forfeiture of his office, to prosecute any and all persons guilty of any violation of the provisions of this act, the penalty of which is fine or imprisonment, or both, or removal from office.

Fines for corporations.

SEC. 40. A corporation for the violation of any of the provisions of this act shall be subject to a fine of not more than one hundred thousand dollars (\$100,000), or may be subject to have declared a forfeiture of the charter and franchise of the corporation, if organized under the laws of this state, or if it be a foreign corporation it shall be subject to be enjoined from further transacting business in this state, or by both such fine and

forfeiture, or by both such fine and injunction, as the case may be. And any officer or agent or employee of such corporation knowingly aiding, assisting or representing such corporation in the performance of such act shall be guilty of a corrupt practice and shall be punished by a fine of not more than five thousand dollars (\$5,000), or by imprisonment in the county jail for not less than one or more than twelve months, or by both such fine and imprisonment.

General penalties and punishments.

SEC. 41. Every person guilty of a corrupt practice, as defined in this act, is guilty of a crime and whoever violates any of the provisions of this act, the punishment for which is not specially provided by law, shall on conviction thereof be punished by imprisonment in the county jail for not more than one year, or by fine of not more than ten thousand dollars, or by both such fine and imprisonment.

Statement of expenses, form of.

SEC. 42. The statement of expenses required from candidates and others by this act, shall be substantially as follows:

State of Nevada, } ss.
County of..... }

I,, having been a candidate (or expended money) at the election for the (state) (district) (city) of, on the.....day of, A. D. 19...., being first duly sworn, on oath do say: That I have carefully examined and read the return of my election expenses and receipts hereto attached, and to the best of my knowledge and belief that return is full, correct and true.

And I further state on oath that, except as appears from this return, I have not, and to the best of my knowledge and belief no person, nor any club, society or association or political agent has on my behalf, whether authorized by me or not, made any payment or given, promised, or offered any reward, office, employment, or position, public or private, or valuable consideration, or incurred any liability on account of, or in respect to, the conduct or management of the said nomination (or election).

And I further state on oath that, except as specified in this return, I have not paid any money, security, or equivalent for money, nor has any money or equivalent for money, to my knowledge or belief, been paid, advanced, given or deposited by any one to or in the hand of myself or any other person for my nomination or election or for the purpose of paying any expense incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further state on oath that I will not, except as far as I may be permitted by law, at any future time make or be a party to the making or giving of any payment, reward, office, position or employment, or valuable consideration for the purpose of defraying any such expenses or obligations as herein mentioned or on account of my nomination or election, or provide or be a party to the providing of any money, security or equivalent for money for the purpose of defraying any such expense.

And I further state that the following persons and no others were appointed by me as my political agents, viz: (give name and address). That herewith is attached true copies of the written appointments of such agents (attach copies of appointments). That I have received reports from all my political agents (or the facts). That I have not expended, paid out, authorized or become liable for any moneys or expenditures in excess of the amount permitted by statute, including the expenditure, debts and liabilities of my political agents. That I have read the laws of the State

of Nevada concerning elections and that I have not knowingly violated any of such laws. (If any exceptions state them.)

(Signature of affiant)

Subscribed and sworn to by the above-named, on the day of, A. D. 19...., before me, in my county aforesaid.

..... (Title of officer.)

Attached to said affidavit shall be a full and complete account of the receipts, contributions and expenses of said affiant, and of his supporters, of which he has knowledge, with numbered vouchers for all sums and payments for which vouchers are required. The affidavit and account of the treasurer of any committee or any political party or organization shall be as nearly as may be in the same form, and so also shall be the affidavit of any person who has received or expended money in excess of the sum of fifty dollars to aid in securing the nomination or election or defeat of any candidate, or of any political party or of any measure before the people.

False oath perjury.

SEC. 43. Any person who shall knowingly make any false oath or affidavit, where an oath or affidavit is required by this act, shall be deemed guilty of perjury and punished accordingly.

Not retroactive.

SEC. 44. None of the provisions of this act shall be construed as governing, or relating to, or in any manner affecting any past acts, omissions or transactions.

Each section independent.

SEC. 45. If any section or clause of this act shall be held unconstitutional it shall not affect or invalidate any other part of this act.

An Act regulating the registration of electors for general, special, and primary elections.

Approved March 27, 1917, 425

CHAPTER 1

RESIDENCE

Residence defined.

SECTION 1. Every citizen of the United States, twenty-one years of age or over, who will have continuously resided in this state six months and in the county thirty days and in the precinct ten days next preceding the day of the next ensuing election, shall be entitled to vote at such election; *provided*, he or she is duly registered as hereinafter provided.

Residence not gained or lost.

SEC. 2. No person shall be deemed to have gained or lost such a residence by reason of his presence or absence while employed in the military, naval, or civil service of the United States, or of the State of Nevada; nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a student at any seminary or other institution of learning, nor while kept at any almshouse, or other asylum, at public expense.

Same.

SEC. 3. A person removing from one county within the state, within thirty days prior to any election, to another, or from one precinct to another of the same county, within ten days prior to any election, shall not

be deemed to have lost his residence in the county or precinct removed from; *provided*, he was an elector in each county or precinct on the date of removal therefrom.

Removal forfeits residence.

SEC. 4. If a person remove to another state, territory, or foreign country, with the intention of establishing his domicile there, and making it his home, he shall lose his residence in this state.

Elector must show proof.

SEC. 5. If a person having a fixed and permanent home in this state, break up such home and remove to another state, territory, or foreign country, the intent to abandon his residence in this state shall be presumed, and the burden shall be upon him to prove the contrary; and the same rule shall obtain when a person, in like circumstances, and in like manner, shall remove from one county to another within the state, or from one precinct to another within the county.

Residence of family place of residence.

SEC. 6. If a man have a family residing in one place and he does business in another, the former must be considered his place of residence, unless his family be located there for temporary purposes only; but if his family reside without the state, and he be permanently located within the same, with no intention of removing therefrom, he shall be deemed a resident.

When residence is lost.

SEC. 7. If a person remove to another state, territory, or foreign country, with the intention of remaining there for an indefinite time, and as a place of residence, he shall lose his residence in this state, notwithstanding that he may entertain the intention of returning at some uncertain future period; and an occasional return, either for business purposes or pleasure, to the place of his former abode in this state, shall not be sufficient to preserve his residence therein.

CHAPTER 2

Registration of electors—County clerk as registrar.

SEC. 8. The county clerk of each county of the State of Nevada is hereby declared to be an ex officio county registrar of such county. He shall have the custody of all books, documents, and papers pertaining to registration hereinafter provided for, and such books, documents, and papers are hereby declared to be an official record of the office of the county clerk of each county.

Official register and card index.

SEC. 9. The official register of electors in each county shall be contained in a book designated register, which book shall be so arranged in precincts and alphabetical divisions as to suitably record, fully and completely, the information given by each elector. A card index of each registered elector shall be kept and the county clerk of such county shall at all times have the custody of such index and be responsible for the safe keeping thereof. The cards shall be four by six inches in size, of white calendered stock. The register book herein provided for shall be in such form as shall be designated by the secretary of state of the State of Nevada. The registry card shall be substantially in the following form:

State of Nevada, } (Face)
 County of..... } ss.

Number.	Date.	Name.	Sex.
Where born.	Age.	Height, ft. in.	Occupation.
Naturalized when.		Where.	
Residence.		Postoffice.	
Length of time in Precinct.		Ward.	School District.
State.	County.	City.	
Date canceled.	Date Registered.	Disability, if any.	

Place where last registered.....

My political affiliations are with the..... party.

State of Nevada, } ss.
 County of..... }

....., being duly sworn, says: I am the elector whose name appears on the face of this card; the several statements thereon contained affecting my qualifications as an elector are true; I am able to mark my ballot (or I am unable to mark my ballot by reason of the physical disabilities on this card specified), and I am not registered elsewhere within the State of Nevada, and claim no right to vote elsewhere than in the precinct on this card specified, so help me God.

Subscribed and sworn to before me this..... day of....., 19....
, Registrar.

State of Nevada, } (Back)
 County of..... } ss.

....., being duly sworn on oath, says: I am the elector named on the face of this card; I am a naturalized citizen of the United States; my certificate of naturalization is lost or destroyed, or beyond my present reach, and I have no certified copy thereof; I came to the United States in the year.....; I was admitted to citizenship in the state (or territory) of....., county of....., by the..... court during the year.....; I last saw my certificate of naturalization, or certified copy thereof, at.....

Subscribed and sworn to before me this..... day of....., 19....
, Registrar.

Certain justices deputy registrars.

SEC. 10. All justices of the peace, except those located in the respective county-seats of the various counties of this state, are hereby designated as deputy registrars for the purpose of carrying out the provisions of this act. The county clerk of each county shall be the registrar for all precincts within the county-seat, and shall appoint deputy registrars, who shall have power to administer oaths, in each precinct of such county distant more than five miles from the county courthouse and wherein no justice of the

peace resides. It shall be the duty of the deputy registrar to register all electors within his precinct applying for registration, and for this purpose he or she shall have authority to demand of the elector all information, and to administer all oaths required by this act. The deputy registrar shall be a resident elector within the precinct for which he is appointed, and shall receive as compensation for all services the sum of not more than fifteen cents for each elector registered, to be paid by the county after being approved by the county clerk. Said registry agent shall forward, within two days after the filling out of any registry cards, all such cards so filled out to the county clerk. Any deputy registrar violating any of the provisions of section 11 of this act shall be guilty of a misdemeanor and be subject to a fine of not less than \$25 nor more than \$100 for each offense. *As amended, Stats. 1919, 263.*

Time for registration.

SEC. 11. Registration offices shall be open for registration of voters for any election, Sundays and legal holidays excepted, from and after the first day of June in any general election year, except as otherwise provided in this act, up to the twentieth day next preceding such election, and between the hours of 9 a. m. and 5 p. m.; *provided*, that the office of the county clerk, as ex officio registrar, shall be open for registration of voters for any election at all times when said office is open for the transaction of his business as county clerk; *provided further*, that during the ten days previous to the close of registration the registration office shall be open evenings until 9 p. m. Registry cards shall be numbered consecutively in the order of their receipt at the office of the county clerk. The county clerk shall classify registry cards according to the precinct in which the several electors reside, and shall arrange the cards in such precinct alphabetically in order. The cards for each precinct shall be kept in a separate filing-case or drawer which shall be marked with the number of the precinct. The county clerk shall, immediately after filling out the registry card as herein provided, and as soon after receipt of cards from the deputy registrar as possible, enter upon the official register of the county, in the proper precinct, the full information concerning any elector as shown by such cards. *As amended, Stats. 1919, 242.*

How elector may register.

SEC. 12. Any elector residing within the county may register by appearing before the county clerk or deputy registrar and making satisfactory answers to all questions propounded by the county clerk touching the items of information called for by such registry card and by signing and verifying the affidavit or affidavits on such card.

Eligibility for registration.

SEC. 13. If any applicant for registration has not resided within the State of Nevada or the county for the required length of time, but is otherwise eligible to registry, the county clerk or deputy registrar shall register such applicant; *provided*, that it shall appear to the county clerk or deputy registrar, from questions propounded to the applicant, that he will be a fully qualified elector by the time such election is held.

Change of registration.

SEC. 14. Every elector on changing his residence, from one precinct to another within the same county, shall cause his registry card to be transferred to the register of the precinct of his new residence by a request in writing to the county clerk of such county in the following form:

I, the undersigned, elector, having changed my residence from Precinct

No..... to Precinct No....., in the county of....., State of....., herewith make application to have my registry card transferred to the precinct register of the precinct of my present residence. My registration number is.....

Dated at..... on the..... day of....., 19....

Certificate for voter in transportation business.

SEC. 15. Any registered elector employed in moving trains, stages, or U. S. mail upon any of the transportation routes in this state, may apply to the county clerk, at any time prior to the delivery of the certified copy of the register to the inspectors of election, to have his name taken off the official register and to receive from the county clerk a certificate of transfer. Such certificate shall be in form similar to the registration card, and contain all the information set forth upon such card. If it appears that he is entitled to such certificate he shall receive same. Upon presenting such certificate at any time not later than one hour prior to the closing of the polls, to the inspectors of election, in any precinct on the railroad, stage line, or transportation route on which he is employed, including the precinct in which he originally registered, the certificate mentioned above, together with his written affidavit, which shall be subscribed and sworn to before any of the inspectors of election, stating that he was so suddenly called away or detained by the transportation business in which he is employed that he did not have time to vote in the precinct in which he was originally registered, or to register under his transfer in that or any other precinct before the delivery of the certified copy of the register to the inspectors of election, the inspectors of election shall accept and file the certificate and affidavit, and shall cause the name of the elector to be entered upon the poll-list with the following remarks: "Elector allowed to vote upon presentation of certificate and affidavit on election day," and shall thereupon allow the elector to vote, the same as if his name had originally appeared upon the register.

The county clerk shall compare the signature of the elector upon such request with the signature upon the registry card of the elector indicated and may question the elector as to any information contained upon such registry card, and if the county clerk is satisfied concerning the identification of the elector and his right to have such transfer made, he shall indorse upon the registry card of such elector the date of the transfer and the precinct to which transferred, and shall file said card in the register of the precinct of the elector's present residence, and the county clerk shall make transfers of elector's name, together with all data connected therewith, to the proper precinct in the register.

County clerk to revise official register.

SEC. 16. Immediately after every general November election the county clerk of each county shall compare with the official register of said precinct on file in his office, the list of the electors who have voted at such election in each precinct, as shown by the official poll-book returned by said inspectors of election of each precinct to the county clerk, and he shall remove from the official register the registry cards of all electors who have failed to vote at such election, and shall mark each of said cards with the word "Canceled," and shall place such canceled cards for the entire county in alphabetical order in a separate drawer to be known as the "canceled file," but any elector whose card is thus removed from the official register may reregister in the same manner as his original registration was made, and the registration card of any elector who thus reregisters shall be filed by the county clerk in the official register in the same manner as original registration cards are filed. The county clerk shall at the same time cancel,

by drawing a red line through the entry thereof, the name of all such electors who have failed to vote at such election.

Registration closed, when—Notice of closing published.

SEC. 17. The county clerk shall close all registration for the full period of twenty days prior to any election. Within three days after the closing of registration he shall transmit to the secretary of state a statement showing the number of voters registered in said county, approximating the number of registry cards not yet received at his office. The county clerk of each county must cause to be published in newspapers published within his county and having a general circulation therein, a notice signed by him to the effect that such registration will be closed on the day provided by law, specifying such day in such notice, and stating that electors may register for the ensuing election by appearing before the county clerk at his office, or by appearing before a deputy registrar in the manner provided by law. The publication of such notice must continue for a full period of thirty days next preceding the close of registration for any election. At least fifteen days before the time when the register is closed for any election, the county clerk shall cause to be posted, in not less than five conspicuous places in each voting precinct, a copy of such election notice, stating the time when the official register will close for such election.

Registry lists to be prepared and published.

SEC. 18. The county clerk shall, at least ten days preceding any election, cause to be printed or written lists of all electors registered and entitled to vote in the individual precincts of such county, and shall forthwith forward to the secretary of state a full, true and correct list of all registered voters with their postoffice addresses. Such lists of registered electors shall contain the names of the electors in full. The expense of printing or writing said lists shall be paid by the county in which the election is held. The county clerk shall cause to be posted, not less than eight days before any election, not less than five copies of such written or printed registry lists in not less than five conspicuous places within the proper precincts; *provided*, that the printing or writing shall cost not to exceed five cents per folio for the printed or written matter of such lists and not to exceed six dollars per thousand for printed or written copies thereof. He shall cause to be published in not to exceed two papers published in different parts of the county, for one insertion, a complete list of all the registered voters of said county, segregated by the precincts; *provided*, that the cost to the county shall not exceed five cents per name to each newspaper publishing such notice. He shall furnish to any qualified elector applying therefor copies of any precinct or county lists at a charge of not to exceed ten cents per folio therefor.

Poll-book, what to exhibit.

SEC. 19. During the time intervening between the closing of the official register and five days before the ensuing election, the county clerk shall prepare for each precinct, a book to be known as the "poll-book." Said poll-book shall be arranged for the listing of the names of electors in alphabetical order, and opposite each name in ruled columns with appropriate headings shall appear the information contained upon the registry cards of each elector, excepting his oath. The poll-books so prepared shall be delivered to the judges of election prior to the opening of the polls in each precinct. Where the precincts in municipal elections or in elections in school districts of the first class include more than one county precinct, the county clerk shall combine into one poll-book the names of all electors in the several precinct registers of the precincts of which such municipal or school-district precinct is composed.

in the furnishing of conveyances for the purpose of taking sick or crippled persons to the polls, but when so furnished they shall have neither banner nor worker upon them. Any person violating this section shall be guilty of a corrupt practice.

Cigars, liquor and candy prohibited.

SEC. 31. No candidate for office, either in a general, special or primary election, shall peddle or distribute cigars, liquors or confectioneries to any person while such candidate, nor shall any person or persons in behalf of a candidate peddle or distribute cigars, tobacco, liquors or confectioneries. Any person violating this section shall be guilty of a corrupt practice.

Witnesses not exempt from testifying.

SEC. 32. No person, otherwise competent as a witness, shall be exempt from testifying as such, concerning any violation of this act, on the ground that such testimony may incriminate him; *provided*, no prosecution shall afterwards be had against any such witness for any offense concerning which he testifies.

Certain inhibitions concerning newspapers.

SEC. 33. No publisher of a newspaper or other periodical shall insert, either in its advertisement or reading columns any paid matter which is designed or tends to aid, injure or defeat any candidate or political party or organization, or measure before the people, unless it is stated therein that it is paid advertisement, and the name of the chairman or secretary, or the names of the other officers of the political or other organization inserting the same, or the name of the person who is responsible therefor, if any, appear in such advertisement in the nature of a signature. No person shall directly or indirectly pay or offer any inducement to the owner, editor, publisher or agent of any newspaper or other periodical to induce him to editorially advocate or oppose any candidate for nomination or election, and no such owner, editor, publisher or agent of any newspaper or periodical shall accept such payment or other inducement. Any person who shall violate any of the provisions of this section shall be punished as for a corrupt practice.

Regulations as to printed matter.

SEC. 34. It shall be unlawful to write, print, or circulate through the mails or otherwise any letter, circular, bill, placard or poster relating to any election or to any candidate at any election, unless the same shall bear on its face the name and address of the author, and of the printer and publisher thereof; and any person writing, printing, publishing, circulating, posting, or causing to be written, printed, circulated, posted or published any such letter, bill, placard, circular, or poster, as aforesaid, which fails to bear on its face the name and address of the author and of the printer and publisher, shall be guilty of an illegal practice, and shall, on conviction thereof, be punished by a fine of not less than ten dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than eight months, or by both such fine and imprisonment. If any letter, circular, poster, bill, publication or placard shall contain any false statement or charges, whether such charges be direct or by innuendo, insinuation or implication, reflecting on any candidate's character, morality or integrity, the author thereof and every person printing or knowingly assisting in the circulation thereof, shall be guilty of political criminal libel, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one nor more than three years. If the person charged with such crime shall, on his trial, prove that the statements made were true, or that he had reasonable ground to believe such

charge was true, and did believe it was true, and that he was not actuated by malice in making such publication, it shall be a sufficient defense to such charge. But in the event the defense is that defendant had reasonable ground to believe the charge was true, and did believe it to be true, as a part of his defense, he shall also prove that, at least five days before such letter, circular, poster, bill or placard containing such false statement or statements was printed or circulated, he caused to be served personally upon the candidate to whom it relates a copy thereof in writing, and calling his attention particularly to the charges contained therein, and that, before printing, publishing, or circulating such charges, he received and read any denial, defense or explanation, if any, made or offered to him in writing by the accused candidate within five days after the service of such charge upon the accused person.

Penalty for failure to file statement of expenses.

SEC. 35. The name of the candidate chosen at a primary nominating election or otherwise, shall not be printed on the official ballot for the ensuing election unless there has been filed by or on behalf of said candidate the statements of accounts and expenses relating to nominations required by this act, as well as a statement of his political agents and by his political committee or committees in his behalf, if public records disclose the existence of such agents, committee or committees. The officer, or board entrusted by law with the preparation of the official ballots for any election shall, as far as practical, warn candidates of the danger of omission of their names by reason of this provision, but delay in making any such statement beyond the time prescribed shall not preclude its acceptance or prevent the insertion of the name on the ballot if there is reasonable time therefor after the receipt of such statements. Any such vacancy on the ballot shall be filled by the proper committee of the political party affected in the manner authorized by law, but not by the use of the name of the candidate who failed to file such statements. No person shall receive a certificate of election until he shall have filed his statements required by this act.

Unlawful to be, or refrain from being, candidate for consideration.

SEC. 36. It shall be unlawful for any person to accept, receive or pay money or other valuable consideration for becoming or refraining from becoming a candidate for nomination or election. Upon complaint made to any district court, if the judge shall be convinced that any person has sought the nomination or seeks to have his name presented to the voters as a candidate for nomination by any political party, in violation of the provisions of this section, the judge shall forthwith issue a writ of injunction restraining the officer or officers whose duty it is to prepare the official ballots for such nominating election from placing the name of such person thereon as a candidate for nomination to any office. In addition thereto the court shall direct the district attorney to institute criminal proceeding against such person or persons for corrupt practice, and upon conviction thereof he and any person or persons paying or giving any such valuable consideration for becoming or refraining from becoming a candidate shall be punished by a fine of not more than one thousand dollars, or imprisoned in the county jail for not more than one year, or both.

Not to be deprived of rights for trivial offense.

SEC. 37. Where, upon the trial of any action or proceeding for the contest of the right of any person declared nominated or elected to office, or to annul or set aside such nomination or election, or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate, or with his knowledge or consent, or was

person who was registered in that name by the oath of two reputable freeholders within the precinct in which such elector is registered.

Action when name omitted.

SEC. 27. Any elector whose name is erroneously omitted from any precinct poll-books, may apply for and secure from the county clerk, a certificate of such error stating the precinct in which such elector is entitled to vote, and upon the presentation of such certificate to the judges of election in such precinct, the said elector shall be entitled to vote in the same manner as if his name had appeared upon the precinct poll-book. Such certificate shall be marked "Voted" by the judges and shall be returned by them with the poll-book.

Deputies included.

SEC. 28. Wherever in this act the words "county clerk" appear, it shall be construed as extending and giving authority to any regularly appointed deputy county clerk.

Masculine gender includes feminine.

SEC. 29. The word "elector," as used in this act, shall apply to male and female electors, and the pronoun "he," used herein, shall be construed and intended to mean the word "he" or "she."

"Election" includes all classes of elections.

SEC. 30. The word "election," as used in this act, where not otherwise qualified, shall be taken to apply to general, special, primary nomination and municipal elections, and to elections in school districts of the first class.

Penalty for violation.

SEC. 31. Any person or persons or any officer of any county, city or town, or school district, who, under the provisions of this act, are required to perform any duty, and shall wilfully or knowingly fail, refuse, or neglect to perform such duty, or to comply with the provisions of this act, shall be guilty of a gross misdemeanor. Upon the conviction of any officer of the violation of the provisions of this act, the judges of the district court hearing such proceeding shall, at the time of rendering judgment of conviction, include in such order of conviction, an order of the court that such officer be removed from office.

Challenged voter guilty of misdemeanor, when.

SEC. 32. If any person offering to vote at any election be challenged by an inspector or any qualified elector at said election, as to his right to vote thereat, an oath shall be administered to him by one of the judges that he will truly answer all questions touching his right to vote at such election, and if it appear that he is not a qualified voter under the provisions of this act, his vote shall be rejected; and if any person whose vote shall be so rejected shall offer to vote at the same election, at any other polling-place, he shall be deemed guilty of a misdemeanor.

Various offenses constitute gross misdemeanor.

SEC. 33. Any person who shall make false answers either for himself or another, or shall violate or attempt to violate any of the provisions of this act, or knowingly encourage another to violate the same, or any public officer or officers or other persons upon whom any duty is imposed by this act, or any of its provisions, who shall wilfully neglect such duty, or shall wilfully perform it in such way as to hinder the objects and purposes of this act, shall, excepting where some penalty is provided by the terms of this act, be deemed guilty of a gross misdemeanor, and, if such person be a public officer, shall also forfeit his office.

County to furnish clerk with help.

SEC. 34. It shall be the duty of the board of county commissioners of each county to provide the county clerk thereof with sufficient help to enable him to properly perform the duties imposed upon him by this act, and the cost of the stationery, printing, publishing, and posting to be furnished or procured by the county clerk by the provisions of this law shall be a proper charge upon the county.

An Act to provide for a registration list of the names of electors in certain incorporated cities within the State of Nevada, prescribing certain duties and fixing the compensation of certain registration agents, providing for the method of nominating candidates to be voted for at municipal elections in such incorporated cities, and other matters properly appertaining thereto.

Approved March 25, 1913, 373.

Duties of registry agent.

SECTION 1. In all incorporated cities within this state polling more than two thousand votes at the last general election preceding any special or regular municipal election it shall not be necessary to have a new registration of electors, but the justice of the peace or other registry agent of any township within this state, which shall have within its limits any incorporated city as herein contained, shall, during the time intervening between the closing of any registration of electors at the last preceding general election and the date of the next ensuing general or special municipal election, carefully prepare and certify from the official register of the last preceding general election, into suitable books, one for each ward within said incorporated cities, the names of all the electors contained in the said official register, alphabetically arranged (the surname first), entering opposite each name the number it bears on said official register, together with all other entries found opposite such name, and indicating with a cross of red ink those electors whose addresses show that they do not reside within the corporate limits of said city. The registry agent shall keep in his office the original certified copy of the said registration list as herein contained, and shall, not later than the day preceding the election, deliver to one of the inspectors of the election of each ward in said city a certified copy of said list to be used at said election, and he shall also prepare not later than the day preceding the day on which the election is to be held, in "index books," one for each ward, and which shall be known as a "check list," lists of the names of all the electors found on the official register for such wards, alphabetically arranged (the surname first), with the number such name bears in the official register placed at the left of the name of the elector, and with a blank column at the right of the column of names, formed by two parallel perpendicular lines, in which the inspectors of elections shall check the names of those voting, by some particular character, as for instance thus: "V" for voted. Said blank columns last mentioned shall have written headings made by the registry agents, showing what particular election said "check lists" apply to, as, for instance, "Voted at City Election, 1913." The copy of the official register, together with the "check list" for each ward, as herein provided, shall be carefully prepared and duly certified to by the registry agent and delivered to some one of the inspectors of election in each ward, at a time not later than the day next preceding that on which such municipal election is to be held, and such "check lists" shall be carefully preserved and transmitted by the inspectors of election to the clerk of the city council, in connection with and as a part of the "Election Returns," as provided by law.

Supplemental registration.

SEC. 2. Before delivering the copy of the registration list as prepared by him in accordance with section 1 hereof the registry agent shall enter thereon and on the said "check list" all of the names of electors registering at the supplemental registration for such election, together with the names of all electors who shall have moved from one ward to another in said city, and by him legally transferred.

Identification of voters.

SEC. 3. In addition to the books hereinbefore contained to be delivered by the registry agent, he shall deliver at the same time and in the same manner the original official register or registers containing the names and original signatures of all electors registered for the last preceding general election, and entitled to vote at such polling-place, together with all the original registration cards containing the signatures of electors registered at the supplemental registration held for such election. Said original list and original registration cards shall be kept by one of the inspectors of election of each ward to be used for the purpose of identifying the electors, and shall be returned to the registry agent upon the completion of the canvass of the vote by the election board.

Council to provide supplies.

SEC. 4. The city council of such incorporated city as herein contained shall provide all necessary books and supplies for the carrying out of the purposes of this act, and in addition to the provisions of this act the said election shall in all other respects be conducted and held in accordance with the provisions of the general election laws of the State of Nevada, and the charter and ordinances of said incorporated city.

Compensation of registry agent.

SEC. 5. The said registry agent as in this act contained shall be entitled to receive, as full compensation for all services rendered by him under the provisions hereof, the sum of fifteen (15) cents per name of each elector by him copied, regardless of the number of times each name shall be copied, which shall be a valid claim against the said city; and his account shall be made out so as to clearly show the number of names by him copied, and sworn to and filed with the city council of the city; and said claim, together with all other just and reasonable demands of other persons for books, advertising and supplies, necessarily incurred in carrying out the requirements of this act shall be audited and paid out of the general fund of said city; *provided*, that if the city council shall deem it necessary and expedient, it shall cause to be printed a list of the registered voters.

Nomination of candidates.

SEC. 6. Candidates for any office to be voted for at such municipal election may be nominated in the following manner: An affidavit of nomination containing the name of the candidate to be nominated, his residence and the office for which he is nominated, signed by electors residing within the ward or other political subdivision for which candidates are to be presented equal in number to at least ten per cent of the entire vote cast at the last preceding municipal election in the ward or other political division for which the nomination is to be made, shall be filed with the city clerk of such incorporated city not more than fifty days nor less than thirty days before the day of election. Said signatures need not all be appended to one paper, but each signer shall add to his signature his place of residence. No certificate of nomination shall contain the name of more than one candidate for each office to be filled. One of the signers of each such

certificate shall swear that the statements therein made are true, to the best of his knowledge and belief, and a certificate of such oath shall be annexed. There shall be charged each candidate for filing a fee of five dollars, which shall be paid to the city clerk at the time of filing and go to the general fund of the city.

Duties of city clerk.

SEC. 7. After receiving the certificates of nomination as contained in section 6 hereof, the city clerk shall perform each and every act necessary as now or may hereafter be provided by law to place the names of the candidates on the ballot; and the general election laws of the State of Nevada wherever and whenever possible shall be adopted and be considered applicable for the uses and purposes of said municipal elections where this act fails to provide for the same.

An Act relating to elections.

When held.

Approved March 24, 1917, 358

SECTION 1. A general election shall be held in the several election precincts in this state on the Tuesday next after the first Monday of November, one thousand nine hundred and eighteen, and every two years thereafter, at which there shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for.

Duties of county commissioners—Precinct established, how and when— Number of voters in precinct.

SEC. 2. It shall be the duty of boards of county commissioners to establish election precincts and define the boundaries thereof, and to alter, consolidate, and abolish the same as public convenience or necessity may require; *provided—*

First—That no new precinct shall be established except upon petition of ten or more qualified electors, permanently residing in the district sought to be established, showing that they reside more than ten miles from any polling-place in said county, unless it shall appear to the satisfaction of said board that not less than fifty qualified electors reside in said precinct, in which event said precinct may be established without regard to the distance which said electors reside from another polling-place or precinct.

Second—That no election shall be held in any precinct in which there shall not be at least ten qualified electors, permanently residing therein at the time notice of holding election therein shall be given.

Third—All qualified electors residing in any election precinct in which there are less than ten qualified electors permanently residing at the time notice of holding elections are given, shall be entitled to register and vote in the election precinct having a polling-place nearest their residence, by the usual traveled route.

Fourth—That no election precinct shall be established or election held at any place in any precinct within one mile of another voting place in the same county, unless there shall have been polled, at the said voting place, at the next preceding general election, not less than fifty votes.

The several boards of county commissioners in the counties of this state in providing for and proclaiming election precincts shall so arrange and divide the voting places in the respective counties so that no greater number than four hundred voters shall vote in one precinct.

It shall be the duty of said boards of county commissioners at their first regular meetings in September preceding each general election (and fifteen days preceding each special election), to appoint three capable and discreet persons possessing the qualifications of electors (who shall not be of the

same political party), to act as inspectors of election at each election precinct, and two clerks of election, who shall have charge of the ballots on election day and shall furnish them to the voters in the manner hereinafter provided for, and the clerk of said board shall forthwith make and deliver to said inspectors personal notice thereof in writing, or deposit the same in the postoffice registered, and postage prepaid, directed to the registry agent of the precinct for which each of said inspectors and clerks are appointed, and it shall be the duty of said registry agent, within ten days after the receipt thereof, to serve the same upon each of said inspectors and clerks of election.

At the same time and in the same manner the clerk of said board shall furnish to each of said inspectors and clerks of election one copy of the election laws for their special use.

It shall be the further duty of the board of county commissioners to cause their clerks to furnish the sheriff with poll-books and other supplies required to be provided by said board of inspectors and clerks of election, and the clerk shall at the same time deliver to the sheriff the ballot-boxes, and keys, the official ballots, the sample ballots, and printed instructions. The sheriff shall thereafter deliver said election supplies by registered or insured mail, express or otherwise, to one of the inspectors of every election precinct in the county, at least one day before the time of holding any election.

Failure of election board, how treated.

SEC. 3. If in any precinct any of such inspectors and clerks are unwilling to serve as inspectors and clerks they should notify the board of county commissioners thereof within five days after the receipt of the notice of their appointment, returning the copy of the election laws sent to them, and clerk of the board of county commissioners shall immediately appoint some suitable person to fill the vacancy and to serve at such election. A failure to notify the board of county commissioners of any unwillingness to serve as inspector or clerk as herein provided shall subject the person to penalty of not less than ten nor more than one hundred dollars, to be sued for and recovered by said board of county commissioners for the use of the county before any justice of the peace of any county.

If through any accident, sickness or inability on the day of election of such inspectors or clerks, or any one thereof, to serve, the inspector or inspectors present on the morning of election may appoint some suitable person to fill the vacancy.

Duties of inspectors of election.

SEC. 4. The said inspectors shall be and continue inspectors of all elections of civil officers to be held in their respective precinct until other inspectors shall be appointed as hereinbefore directed; and the clerks of election may continue to act as such.

Election officers to be sworn.

SEC. 5. Previous to votes being taken, the inspectors and clerks of election shall, severally, take the prescribed official oath, and, in addition thereto, an oath or affirmation in the following form, to wit:

I, A. B., do solemnly swear (or affirm), as the case may be, that I will perform the duties of inspector (or clerk, as the case may be) of the election to be held this day, according to law and to the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in any manner, in conducting the same. So help me God (or if an affirmation under the pains and penalties of perjury).

Who may administer oaths.

SEC. 6. In case there shall be no judge or justice of the peace present at the opening of the election, one of the inspectors is hereby empowered to administer the oath or affirmation and shall cause an entry thereof to be made and subscribed by him in the poll-books.

Opening and closing polls.

SEC. 7. At all elections to be held under this act, the polls shall be open at the hour of 8 o'clock in the forenoon, and continue open until 6 o'clock in the afternoon of the same day, at which time the polls shall be closed; *provided*, whenever at any election all the votes of the precinct as shown by the registry list shall have been cast, the inspectors shall immediately close the polls and shall forthwith begin the counting of the ballots, and continue the same without unnecessary delay until the count is completed. Upon opening the polls one of the clerks, under the direction of the inspectors, shall make proclamation of the same, and thirty minutes before closing of the polls proclamation shall be made in like manner that the polls will be closed in half an hour; *provided further*, if at the hour of closing there are any voters in the polling-place, or in line at the door, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote. But no one who shall arrive at the polling-place after 6 o'clock in the afternoon shall be entitled to vote, although the polls may be open when he arrives. No adjournment or intermission shall be taken except as hereinafter provided.

Ballot-boxes furnished.

SEC. 8. There shall be provided and kept by the county commissioners of each county, at the expense of the county, a suitable ballot-box, with a lock and key, for each precinct, and they shall furnish the same to the inspectors of each election precinct or district within their county.

Description of boxes—To be examined.

SEC. 9. There shall be an opening through the lid of each box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot-box shall be carefully examined by the inspectors of election, that nothing may remain therein; it shall then be locked and the key thereof delivered to one of the inspectors, to be designated by the majority thereof, and shall not be opened during the election, except in the manner and for the purpose hereinafter mentioned.

Duties of officers of election.

SEC. 10. It shall be the duty of the inspectors of election, at each poll at every election, to have before them a certified copy of the register of voters of the precinct or district for which they are the inspectors provided by law; and the inspector to whom any ticket may be delivered shall, upon receipt thereof, pronounce with an audible voice the name of the person offering to vote, and another one of the inspectors shall examine the certified copy of the register, and if the name of the person is found thereon his ticket shall be put in the ballot-box without being inspected. The name of the elector shall then be checked on the certified copy of the register, and the clerks of election shall enter his name and number in the poll-book. No person shall be permitted to vote whose name is not on the register and who shall refuse to comply with the requirements of section 12 of this act. Said register shall be to said inspectors of election conclusive evidence of the right of the person to vote whose name appears upon the same; *provided*, that said inspectors of election may require any person to give true answers under oath or affirmation to all such questions as they may desire

to ask touching the identity of the person with the name in or under which he may wish to vote.

Special deputy sheriffs.

SEC. 11. It shall be the duty of the board of county commissioners of the several counties of the state to determine the number of special deputy sheriffs to be appointed by the sheriff of the several counties to serve at each election precinct, for the purpose of preserving order and making arrests, to be paid as other fees.

Who may challenge—Oath of elector on challenge.

SEC. 12. A person offering to vote may be orally challenged by any elector of the precinct upon the ground that he is not the person entitled to vote as claimed, or has voted before on the same day, in which the inspector or one of the judges shall tender him the following oath: "You do swear (or affirm) that you are the person whose name is entered upon the registry list of this precinct." In case such person refuse to take oath so tendered he shall not be allowed to vote, and the clerks of the election shall write the word "Challenged" opposite the name of each person challenged upon the register.

Canvass of votes.

SEC. 13. As soon as the polls of election shall be finally closed the inspectors shall immediately proceed to canvass the vote given at such election; and the canvass shall be public and continue without adjournment until completed.

Canvass, how conducted.

SEC. 14. The canvass shall commence by a comparison of the poll-lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found to agree. The box shall then be opened and the ballots contained therein taken out and counted by the inspectors, and opened so far as to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballots is completed; and if on comparison of the count with the poll-lists and the appearance of such ballots a majority of the inspectors shall be of the opinion that the ballots thus folded together were voted by one elector they shall be rejected, and carefully sealed up in an envelope, upon which shall be written the reason for their rejection, and shall be signed by the inspectors, and placed back in the ballot-box, to be retained with the other ballots.

Purging of ballot-box.

SEC. 15. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll-lists they shall be replaced in the box, after being purged as above, and one of the inspectors, with his back turned to the box, shall publicly draw out and destroy therefrom so many ballots, unopened, as shall equal the excess.

Duties of clerks.

SEC. 16. The ballots and poll-lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and for whom cast, and when completed the clerks shall set down in their poll-books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed in writing at full length, and also in figures; such entry to be made, as nearly as the circumstances will admit, in the following form, to wit:

At an election held at the house of A. B., in the town (or precinct) of _____, in the county of _____, and the State of Nevada, on the _____ day of _____, A. D. _____, the following-named persons received the number of votes annexed to their respective names for the following-described offices, to wit:

A. B. had _____ votes for member of Congress.
 C. D. had _____ votes for state treasurer.
 E. F. had _____ votes for state controller.
 G. H. had _____ votes for state superintendent of public instruction.
 I. J. had _____ votes for member of state senate.
 K. L. had _____ votes for member of the assembly.
 (And in a like manner for any person voted for.)

Certified by us:

M. N.,
 O. P.,
 Q. R.,
Inspectors of Election.
 A. B.,
 C. D.,
Clerks of Election.

Attest:

The vote for and against any question submitted to the electors shall be certified and returned in the same manner.

Disposition of returns.

SEC. 17. The inspectors shall file the voted ballots on a string, enclose and seal the same in an envelope endorsed "Election Returns, Voted Ballots." The rejected ballots shall be filed on a string, enclosed and sealed in an envelope endorsed "Election Returns, Rejected Ballots"; one of the "tally-lists, regular ballots," one of the "tally-lists, rejected ballots," and one of the "poll-books" shall be enclosed and sealed in an envelope endorsed "Election Returns." Voted ballots, rejected ballots, "tally-list, regular ballots," "tally-list, rejected ballots," challenge-list, certified copy of register, stubs of used ballots and unused ballots shall be sealed under cover, directed to the clerk of the board of county commissioners of the county in which such election was held, or such other officer as herein provided, endorsed "Election Returns"; *provided*, that if said clerk of the board of county commissioners, as county clerk, or any one of the following-named county officers was voted for office at the last election he shall not be the custodian of such election returns, but such returns shall be directed and delivered to the county officer who was not a candidate and voted for office in the following order: Second—The county recorder. Third—The county treasurer. Fourth—The county assessor. Fifth—The chairman of the board of county commissioners. Sixth—One of the county commissioners. Seventh—To the county clerk if all of the said officers were voted for at the last election. The voted ballots, rejected ballots, spoiled ballots, tally-list, challenged-lists, certified copy of the register, stubs of the ballots used, this enclosed and sealed, shall, after canvass of the votes by the board of county commissioners, be deposited in the office of the vaults of the county clerk, and preserved until the next general election. The other poll-books and tally-lists shall be deposited with one of the inspectors of the election, to be determined by lot, if not otherwise determined, agreed upon, and said poll-book or tally-list deposited with the board of county commissioners shall be subject to the inspection of any elector, at any time thereafter, who may wish to examine the same; *provided, however*, that the ballots so deposited with the board of county commissioners shall not be subject to the inspection of any one, except in cases of contested election, and then only by the judge, body, or board before whom such election is being contested.

Duties of inspectors.

SEC. 18. In precincts which are by the usually traveled route more than ten miles distant from the county-seat, and wherein less than fifty voters shall be registered for that election, the inspectors shall, before they adjourn, post conspicuously at the polling-place a bulletin signed by each of them stating the number of ballots cast for each candidate and for and against each question which has been voted upon.

Result of vote to be posted.

SEC. 19. Before closing the final adjournment of any board of election in any voting precinct in this state the inspectors shall canvass and count any and all ballots rejected by them on a separate tally-sheet, in the same manner as legal ballots are now canvassed and counted, and transmit said sheet with the other papers and documents as provided in section 17. The "Result of Votes Cast" for any and all candidates, and on all questions submitted, so far as can be determined, shall be posted immediately thereafter in some conspicuous place in the building in which the election is held, a duplicate copy of which shall be sent under separate cover to the county clerk and the county clerk shall file and keep it in his office until the next general election.

Unlawful for inspector to put mark on ballot—Exception.

SEC. 20. It shall be unlawful for any clerk or inspector of election to place any mark whatsoever upon any ballot other than a "spoiled" ballot; *provided, however*, that when such clerks or inspectors of election shall reject a ballot for any alleged defect or illegality, it shall be the duty of such inspectors of election to certify over their signatures upon the back of each and every ballot rejected that such ballot or ballots were in fact rejected, and briefly stating their reasons therefor.

Returns sent by registered mail, when.

SEC. 21. They shall also, in precincts mentioned in section 18, before they adjourn, place the papers and documents named in section 17 in one or more sealed packages, the weight of which, including the wrapper on box, must be less than the limits of weight allowed to be transmitted by mail. They shall then address the same to the proper officer at the county-seat, stating in writing on the outside of the package the contents thereof, and deliver it to one of their number, to be chosen by lot, who shall immediately without opening it or permitting it to be opened, deliver it to the nearest postmaster and pay the postage thereon, and have the package registered; *provided*, it may be sent by express if it can be delivered quicker than by mail.

Expenses, how paid.

SEC. 22. The inspector who delivers the package shall be paid the amount expended by him in paying the postage on the package, and fifteen cents per mile for going to and fifteen cents for returning from the post-office in the same manner and out of the same fund as other election expenses are paid; *provided*, that no such mileage shall be paid unless the total distance necessarily traveled in going and returning be greater than two miles.

Custody of ballots.

SEC. 23. In cases where section 18 of this act shall apply the ballots shall, after they reach the county-seat, be kept in sealed packages by the proper officer, instead of in the ballot-boxes.

Custody of ballot-box.

SEC. 24. In precincts mentioned in section 18, the ballot-box may remain in the custody of the inspectors until the next election, when it shall be turned over to the inspectors of said election, and in such cases the tally-lists, poll-books and other books and papers may be sent in sealed packages by registered mail to any of the inspectors.

County commissioners to canvass—Tie—Recount—New election, when.

SEC. 25. On the tenth day (or if that day shall fall on Sunday, then on the Monday following), after the close of any election, or sooner, if all the returns be received, the board of county commissioners shall proceed to open said returns and make abstracts of the votes. Such abstracts of votes for United States senator and for member or members of Congress shall be on one sheet; the abstract for votes for presidential electors shall be on one sheet; the abstract of votes for members of the legislature shall be on one sheet; the abstract of the votes for district and state officers shall be on one sheet, and the abstract of votes for county and township officers shall be on one sheet; and the abstract of votes upon any question shall be on one sheet. And it shall be the duty of the board of county commissioners to cause a certificate of election to be made out by the respective clerks of said board of county commissioners to each of the person having the highest number of votes for members of the legislature, district, county, and township offices, respectively, and to deliver such certificate to the person entitled to it on his making application to said clerk at his office; *provided*, that when a tie shall exist between two or more persons for the senate or assembly, or any other county, district or township officer, any of said persons shall have the right to demand of the board of county commissioners a recount of all the ballots cast for them for the office for which they were candidates; *and provided further*, that if after said recount has been had the vote between them or any of them shall still remain a tie, the board of county commissioners shall order their clerk to give notice to the sheriff of the county, who shall immediately advertise another election giving at least ten days notice. And it shall be the duty of the said clerk of said board of county commissioners of said county, on the receipt of the return of any general or special election, to make out his certificate of election, stating therein the compensation to which the inspectors and clerks of election may be entitled by law for their services, and lay the same before the board of county commissioners at their next session; and the said board shall order the compensation aforesaid, if correct, to be paid out of the county treasury.

Penalty for malfeasance—Canvass for state officers.

SEC. 26. The board of county commissioners, after making the abstract of votes as provided in section 25, shall cause their clerk, by an order made and entered in the minutes of their proceedings, to make a copy of said abstract, and forthwith transmit the same to the secretary of state at the seat of government. If the board of county commissioners shall neglect or refuse to make the order as required by this act, they and each of them shall be guilty of a misdemeanor in office, and shall, on conviction thereof, be liable to a fine of not less than one hundred dollars nor more than five hundred dollars each, and imprisonment in the county jail for not less than ten and not more than one hundred days each, or both such fine and imprisonment, and shall be removed from office. And on the third Monday of December succeeding such election the chief justice of the supreme court and the associate justices, or a majority thereof, shall meet at the office of the secretary of state, and shall open and canvass the vote for

United States senator and members of Congress, district and state officers; and for and against any questions submitted. The governor shall grant a certificate of election to and commission the persons having the highest number of votes and shall also issue proclamations declaring the election of such persons. But in case there shall be no choice, by reason of any two or more persons having an equal and the highest number of votes for the same office, the senate and assembly shall convene in the assembly chamber, on the second Monday of February, at the next regular session of the legislature after such election, and by joint vote of both houses elect one of said persons to fill said offices; *provided*, when an election for electors of president and vice-president of the United States takes place, the vote thereof shall be canvassed at the same time and in the manner aforesaid.

Informalities not to vitiate.

SEC. 27. No certificate shall be withheld on account of any defect or informality in the returns of any election, if it can with reasonable certainty be ascertained from such returns what office is intended and who is entitled to such certificates, nor shall any commission be withheld by the governor or board of county commissioners on account of any such defect or informality of any returns made to the office of the secretary of state or to the board of county commissioners.

Compensation.

SEC. 28. If the returns of the election of any county in the state shall not be received at the office of the secretary of state on or before said third Monday in December succeeding such election, the said secretary may forthwith send a messenger to the clerk of the board of county commissioners of such county, whose duty it shall be to furnish said messenger with a copy of such returns, and the said messenger shall be paid out of the treasury of such county the sum of twenty cents for each mile he shall necessarily travel in going to and returning from said county. Whenever it shall be necessary in the opinion of the board of county commissioners to employ a messenger to convey the returns to the seat of government and deliver them to the secretary of state, the person performing such service shall also be entitled to receive, as compensation, mileage at the rate of twenty cents per mile, computing the distance from the county-seat to the seat of government by the usual traveled route.

Canvass for district officers.

SEC. 29. When two or more counties are united in one senatorial, representative, or judicial district for the election of any officers, the board of county commissioners of each county shall canvass the votes, according to law, of the voters of their respective counties for said officer or officers; and the commissioners of the county whose initial is the lowest on the alphabet shall transmit to the commissioners of the county of the highest initial a copy of the abstract of the votes for such officer or officers, when the said last commissioners shall make a final abstract and aggregate of said votes, and shall proceed to cause to be issued certificates of election, and otherwise to act as is provided in this and the two preceding sections.

Duties of county clerks in transmitting returns.

SEC. 30. Whenever the returns are required to be transmitted by the clerk of the board of county commissioners to the secretary of state, it shall be the duty of such clerk, if not otherwise directed by the board of county commissioners, to deliver the same to some postmaster of the county, at the postoffice, to be transmitted by mail, taking from such postmaster, if it can be obtained, a certificate setting forth the time when such

reports were deposited in the postoffice, which certificate the clerk shall file in his office. If the clerk of the board of county commissioners should neglect or refuse to make out and transmit the returns or abstract, as required by this act, he shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars or more than five hundred dollars, and imprisonment in the county jail for not less than one month or more than six months, or both such fine and imprisonment, in the discretion of the court, and shall be removed from office.

Per diem of inspector and clerk of election—Mileage of messenger.

SEC. 31. There shall be allowed out of the county treasury of such county to each inspector and each clerk of election five dollars per diem, but in no case to exceed twenty dollars for all services required by law to be performed by each of them at any one election. And to the person carrying the poll-books from the place of election to the clerk's office the sum of fifteen cents per mile for going and fifteen cents per mile for returning, to be paid out of the county treasury.

Ballots, how provided. AUSTRALIAN BALLOT LAW

SEC. 32. All ballots cast in elections for public officers within this state shall be printed and distributed at public expense as hereinafter provided. The printing of general tickets and cards of instruction for the electors of each county, and the delivery of the same to the election officers, as provided for in this act, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses and in case of separate elections for city, town, or district officers the printing and delivering of tickets and cards of instruction shall be a charge upon the city, town, or district in which said tickets and cards are to be used, the payment of which shall be provided for in the same manner as the payment of other city, county, or district expenses.

Duties of secretary of state.

SEC. 33. Not less than thirty-five days before an election to fill any public office, the secretary of state shall certify to the county clerk of each county within this state the name of each person and the name of the office for which he is nominated, as specified in the certificate of nomination filed with him.

Constitutional amendments, action upon.

SEC. 34. When any proposed constitution, constitutional amendment, or other question is to be submitted to the popular vote, the secretary of state shall, within ninety days before the election at which such constitution, constitutional amendment or question to be voted upon, certify the same to each county clerk of this state, assigning to each question or constitutional amendment a number by which it shall be designated, sending to each of said clerks enough copies of such constitution, constitutional amendments, or other questions to supply each inspector of election, and enough additional copies to carry out the provisions of this act. And it is hereby made the duty of the county clerk of each county to have posted, ten days before election, in each precinct, three copies of said constitution, constitutional amendment or other question to be voted on, one of which copies shall be posted at the place of holding the polls. If there is a newspaper published in the county, the county clerk shall cause to be published said constitution, constitutional amendment, or other question to be voted therein three times; one publication

thereof shall be at least thirty days before election; another not less than twenty days; and another not more than ten days before said election. Any secretary of state or county clerk of this state who shall fail to comply with the provisions of this act shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum not less than \$100, nor more than \$500.

Duties of county clerk and secretary in relation to ballots.

SEC. 35. It shall be the duty of the county clerk to provide printed ballots for every election for public offices, in which any voters within the county participate, and to cause to be printed in the ballot prescribed herein the name of each and every candidate whose name has been certified to, or filed with him, as provided in this act. Ballots, other than those printed, as provided in this act, shall not be cast, or counted, in any election. All ballots shall be printed on tinted paper, furnished by the secretary of state. It shall be the duty of the secretary of state to obtain and keep on hand a sufficient supply of such paper for ballots, and to furnish the same in quantities ordered to any county clerk. Said paper shall be water-marked with a design furnished by the secretary of state, in such manner that the said water-mark shall be plainly discernible on the outside of such ballot when properly folded. Such design shall be changed for each general election, and the same design shall not be used again at any general election within the space of eight years, but at any special or separate local election paper marked with the design used at any previous election may be used.

Ballots, how printed, numbered and ruled—Specifications as to type, etc.

SEC. 36. On each ballot a perforated line shall extend from top to bottom, one-half inch from the right-hand side of such ballot, and upon the half-inch strip thus formed there shall be no writing or printing, except the number of the ballot, which shall be upon the back of the strip in such position that it shall appear on the outside when the ballot is folded. The number on each ballot shall be the same as that on the corresponding stub, and the ballots and stubs shall be numbered consecutively in each county. Where the names of candidates are printed in separate columns the columns shall be separated by heavy rules, and on all ballots the names of candidates shall be separated by a rule extending to the extreme right of the column. All ballots shall contain the name of each and every candidate whose nomination for any office specified in the ballot has been certified to and filed according to the provisions of this act, and no other name. The names of the candidates for each office shall be arranged under the designation of the office in alphabetical order, according to the surname, except that the names of candidates for presidential electors shall be arranged in groups as presented in the several certificates of nomination, the political designation of each candidate except in the case of candidates for judicial offices, shall be printed opposite his name. There shall be a margin at the right-hand side of the names at least one-half inch wide, so that the voter may clearly indicate in the way hereinafter described the candidate or candidates for whom he wishes to vote. Whenever any question is to be submitted to the vote of the people, it shall be printed upon the ballot, in such manner as to enable the electors to vote upon the question in the manner hereinafter provided, with a brief statement of the purport of such question. Before every question or constitutional amendment to be voted upon, there shall be placed a number, to be designated by the secretary of state, in bold-face type, not smaller than 24-point. There shall be printed on the ballots opposite the designation of each office such words as will aid the voter to indicate his choice of candidate, such as "Vote for one," "Vote for three," and the like.

Number of ballots, and how bound.

SEC. 37. All ballots when printed shall be bound in stub-books of five, ten, twenty-five, fifty, and one hundred ballots each. A record of the number of ballots printed for them shall be kept by the respective county clerks.

Number of ballots provided.

SEC. 38. The county clerk shall provide for each election precinct in the county at least one hundred and ten ballots for each one hundred voters registered therein, and not more than five ballots in excess thereof.

Error in ballots, how cured.

SEC. 38½. Whenever it shall appear, by affidavit, that an error or omission has occurred in the publication of the name or description of any of the candidates nominated, or in the printing of the ballots, any member of the board of county commissioners, upon application by any voter, shall issue an order requiring the county clerk to correct such error.

Loss of ballots—New election, when.

SEC. 39. Before the opening of the polls at any election the county clerk shall cause to be delivered to the board of election of each election precinct in his county the proper number of tickets of the kind to be used in election precinct. In case of prevention of an election in any precinct by reason of the loss or destruction of the ballots intended for that precinct, or any other cause, the inspector or other election officer for the precinct shall make an affidavit setting forth the fact and transmit it to the governor of the state. Upon receipt of such affidavit, and upon the application of any candidate for any office to be voted for by the voters of such precinct, the governor shall order a new election in such precinct.

Booths and ballot-box provided.

SEC. 40. The board of county commissioners shall provide, at each polling-place within the county, a sufficient number of places, booths, or compartments, in which voters may conveniently mark their ballots, that in the marking thereof they may be screened from the observation of others, and a guard-rail shall be so placed that only such persons as are inside said rail can approach within six feet of the ballot-box and of such booths or compartments. The arrangement shall be such that neither the ballot-box nor the booths or compartment shall be hidden from the view of those just outside the guard-rail. The number of such booths or compartments shall not be less than one for each fifty or fraction of fifty voters registered in the precinct. Each of said booths or compartments shall be kept provided with proper supplies and conveniences for marking ballots. No person other than voters engaged in receiving, preparing, or depositing their ballots, shall be permitted inside said guard-rail during the time the polls are open, except by authority of the board of election, and in that case only for the purpose of keeping order and enforcing the law.

How to vote.

SEC. 41. Any person desiring to vote shall give his name and address to one of the clerks of election, who shall announce the same, and if the other clerks shall find the name upon the registry book he shall repeat the name and address. One ballot shall then be given to the voter, and the number of the said ballot shall be written by one of the clerks of election upon the registry list opposite the name of the voter receiving it.

Ballot, how prepared—Marking done with stamp.

SEC. 42. On receiving his ballot the voter shall immediately retire alone to one of the places, booths, or compartments. He shall prepare his ballot

by stamping a cross or X in the square, and in no other place, after the name of the person for whom he intends to vote for each office. In case of a constitutional amendment or other question submitted to the voters, the cross or X shall be placed in the square after the answer which he desires to give. Such stamping shall be done with a stamp in black ink, which stamp, ink, and ink-pad shall be furnished in sufficient number by the county clerk for each election precinct in the county. Before leaving the booth or compartment the voter shall fold his ballot in such manner that the water-mark and the number of the ballot shall appear on the outside, without exposing the stamps upon the ballot, and shall keep it so folded until he has voted. Having folded his ballot, the voter shall deliver it to the inspector, who shall announce the name of the voter and the number of his ballot. The clerk having the registry list in charge, if he finds the number to agree with the number of the ballot delivered to the voter, shall repeat the name and number, and shall mark opposite the name the word "Voted." The inspector shall then separate the strip bearing the number from the ballot, and shall deposit the ballot in the ballot-box. Said strip and number shall immediately be destroyed.

Time allowed to prepare ballot.

SEC. 43. But one person shall occupy any one booth or compartment at one time, and no person shall remain in a booth or compartment longer than may be necessary to prepare his ballot, and in no case longer than ten minutes.

Spoiled ballot, how treated.

SEC. 44. Any voter who shall accidentally spoil a ballot may return such spoiled ballot to the clerk of election, and receive another one in its place. All the ballots thus returned shall be immediately canceled by writing the word "Canceled" across the face of the ballot, and with those not distributed to the voters, shall be returned with the election returns. A voter who does not vote the ballot delivered to him shall, before leaving the space inside the guard-rail, return such ballot to the clerks, who shall immediately cancel the same and return it in the same manner as a spoiled ballot. The clerks of election shall account for the ballots delivered to them by returning a sufficient number of unused and spoiled ballots to make up, when added to the number of official ballots cast, the number of ballots delivered to them.

Assistance in voting, when.

SEC. 45. A voter who declares under oath that by reason of physical disability he is unable to mark his ballot shall, at his request, be permitted to receive the assistance, in the marking, of any elector, other than an election officer, but no person shall be permitted to go inside the guard-rail as an assistant to more than one voter.

Only official ballots voted.

SEC. 46. No ballots shall be deposited in the ballot-box unless the water-mark, as hereinbefore provided, appears thereon, and the slip containing the number of the ballot has been removed therefrom by the inspector.

Sample ballots—Instructions to voters to be posted.

SEC. 47. The county clerk shall cause to be printed on plain white paper, without water-mark or endorsement, except the words "Sample Ballot," at least one-half as many copies of the form of ballot provided for use in each precinct as there shall be registered voters in any election precinct, and shall furnish same to the board of election of each precinct. Said county clerk shall also cause to be printed in plain type on cards, instructions for the guidance of voters for obtaining and marking their ballots.

He shall furnish twelve such cards to the boards of election of each election precinct in the county at the time and in the manner that ballots and sample ballots are furnished. The board of election shall post at least one of such cards in each booth provided for the preparation of ballots, and not less than three of such cards at other public places in and about the polling-places on the day of election.

Kind of ballots to be counted—Kind rejected.

SEC. 48. In counting the ballots any ballot not bearing the water-mark, as provided in this act, shall not be counted, but such ballot must be preserved and returned with the other ballots. When a voter marks more names than there are persons elected to an office, or if for any reason it is impossible to determine the voter's choice for any office, his vote for such office shall not be counted. Any ballot upon which appears names, words, or marks, written or printed, except as in this act provided, shall not be counted. But nothing in this act shall be construed as grounds for the rejection of a ballot where the intention of the voter is clear and where marks on the ballot cannot be definitely shown to be intentional distinguishing marks, characters or words.

Ballots must be printed within county or state.

SEC. 49. The county clerks of the several counties of this state shall supervise the printing of the ballots, and such ballots shall be printed at some newspaper or printing office in the county where the ballots are to be voted, and in case there is no newspaper or printing office in the county in which the work can be done, then said clerk is hereby authorized, empowered, and directed to have said printing done in any newspaper or printing office in the state; *provided* that the cost of printing said ballots shall not exceed the sum of forty dollars per thousand.

Duties of secretary of state and county clerks.

SEC. 50. It shall be the duty of the secretary of state to cause to be printed in pamphlet form a requisite number of copies of this act, with marginal notes and properly indexed, a suitable number of which shall be forwarded by him to the county clerks of the several counties of the state on or before the first day of July previous to holding of any general election and at least twenty days previous to the holding of any special election. And it is hereby made the duty of said county clerks to enclose in each and every ballot-box sent out by them to be used at the various precincts of their respective counties one or more copies of said act as in their judgment they may deem proper.

Fraudulent voting a felony.

SEC. 51. Any person who shall vote, or offer to vote, at any election mentioned in this act, but who shall not be a qualified elector to vote, in the name of any other registered elector, may be deemed guilty of a felony, and on conviction thereof before any court of competent jurisdiction shall be punished by imprisonment in the state prison for not less than one or more than three years; and any person who shall wilfully cause, or endeavor to cause his name to be registered in any other election district than that in which he resides, or will reside prior to the day of the next ensuing election; and any person who shall cause or endeavor to cause his name to be registered, knowing that he is not a qualified elector, or will not be a qualified elector on or before the day of the next ensuing election in the election district in which he causes or endeavors to cause such registry to be made; and any other person who shall induce, aid, or abet any such person in the commission of either of such acts in this section enumerated and described shall be deemed guilty of a misdemeanor, and,

upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by confinement in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

Perjury and penalty for.

SEC. 52. All wilful, corrupt and false swearing or affirming before any registry agent shall be deemed perjury, and on conviction shall be punished as such. If any registry agent or any other person in any manner concerned shall wilfully and corruptly violate any of the provisions of this act, the penalty for which is not herein specifically prescribed, he shall be punished for each and every offense whereof he shall be duly convicted by imprisonment in the state prison for a term not less than one nor more than five years, or by fine of not less than one hundred nor more than one thousand dollars, or both such fine and imprisonment, in the discretion of the court.

Betting on election prohibited.

SEC. 53. Every person who makes, offers or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

Neglect or refusal of duty.

SEC. 54. Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, who wilfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, shall be deemed guilty of a felony, and punishable by a fine of not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

Certain acts made misdemeanor—Penalty.

SEC. 55. Every person who after being required by the board of judges at any election, refuses to be sworn, or who after being sworn, refuses to answer any pertinent question propounded by such board, touching his right, or right of any other person to vote, is guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

Fraud on ballot-box a felony, how punished.

SEC. 56. Every person not entitled to vote who fraudulently votes, and every person who votes more than once at any election, or knowingly hands in two or more tickets folded together, or changes any ballot after the same has been deposited in the ballot-box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted, or adds to or mixes with or attempts to add or mix with the ballots lawfully provided, other ballots while the same are being counted or canvassed, or abstracts any ballots lawfully polled at any time with intent to change the result of such election, or carries away or destroys, or attempts to carry away or destroy, any poll-list or ballots, or ballot-box, for the purpose of breaking up or invalidating such election, or wilfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with voters lawfully exercising their

right of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, shall be guilty of a felony, punishable by a fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

Fraudulent voting—Penalty.

SEC. 57. Every person not entitled to vote who fraudulently attempts to vote, or who, being entitled to vote, attempts to vote more than once at any election, or who procures, aids, assists, counsels or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, shall be guilty of a misdemeanor, punishable by a fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

Misdemeanor to violate secrecy of ballot—Forging returns a felony.

SEC. 58. Every inspector, judge, or clerk of an election who, previous to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in to be opened or examined previous to putting the same into the ballot-box, or who makes or places any mark or device on any folded ballot, with a view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such inspector, judge, or clerk has fraudulently or illegally discovered to have voted for by such elector, is punishable by a fine of not less than fifty nor more than five hundred dollars. Every person who forges or counterfeits the returns of an election purporting to have been held at a precinct, town or ward, when no election was in fact held, or wilfully substitutes forged or counterfeit returns of election in place of the true returns of a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the state prison for a term of not less than two or more than ten years.

Bribery, intimidation or menace—Penalty.

SEC. 59. Every person who by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or furnishes an elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at such election by deceiving and causing such elector to vote for a different person or any office than he intended or desired to vote for, or who, being inspector, judge, or clerk of any election, while acting as such, induces or attempts to induce, any elector either by menace or reward, or promise thereof, to vote different from what such elector intended or desired to vote, shall be guilty of a felony, punishable by a fine not exceeding one thousand dollars or imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

Promoters of candidates punished—Penalty.

SEC. 60. Every person who, with the intent to promote the election of himself or any other person, either, First—Furnishes entertainment at his expense to any meeting of electors previous to or during an election; Second—Pays for, procures, or engages to pay for any such entertainment; Third—Furnishes or engages to pay or deliver any money or property for the purpose of procuring the attendance of voters at the polls, or for the

purpose of compensating any person for procuring attendance of voters at the polls, except for the conveyance of voters who are sick or infirm; Fourth—Furnishes or engages to pay or deliver any money or property for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings, for the discussion of public questions, and of printing and circulating ballots, handbills, and other papers previous to such election—shall be guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars, or imprisonment not exceeding six months in the county jail.

Bribery or attempt to bribe, a felony.

SEC. 61. Every person who gives or offers a bribe to any officer or member of any legislature, caucus, political convention, committee, primary election, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, shall be guilty of a felony, punishable by a fine not exceeding five thousand dollars or ten years' imprisonment in the state prison, or both such fine and imprisonment.

Contingent promises of appointment a felony.

SEC. 62. Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person to office, position, or employment as an inducement or consideration to any person to vote for, or procure or aid in procuring the election of such candidate, or person not being a candidate, who communicates any offer made in violation of this and the preceding section to any person with intent to induce him to vote for, or to procure or aid in procuring the election of the candidate, shall be deemed guilty of a felony, punishable by imprisonment not exceeding five years or a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Sale of liquor prohibited.

SEC. 63. No person shall sell, give away, or furnish, or cause to be sold, given away, or furnished, either for or without pay, within this state, on any day upon which a general election is held, or within the limits of any county, or city, or on any day upon which any special or municipal election is held therein, any spirituous, malt, or fermented liquors or wines; and any one so doing shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than one nor more than six months, or by both such fine and imprisonment, in the discretion of the court; and it shall be the duty of the judges of the district courts of the several judicial districts in this state to specially give this act in charge to every grand jury impaneled in their respective districts.

Governor to offer reward.

SEC. 64. The governor is hereby authorized and directed, at least thirty days previous to any general election, and fifteen days previous to any special election, to issue a proclamation offering a reward of one hundred dollars for the arrest and conviction of any person violating any of the provisions of this act when the crime is a misdemeanor, and a reward of two hundred dollars for the arrest and conviction of any person guilty of a felony, as herein provided; such rewards to be paid until the total amount hereafter expended for the purpose reaches the sum of ten thousand dollars, payable out of any moneys in the state treasury not otherwise appropriated. All moneys collected under the provisions of this act

shall revert to the general school fund of the several counties where such cases were brought.

Misdemeanor to interfere with election supplies.

SEC. 65. Any person who shall, during an election, remove or destroy any of the supplies or other conveniences placed in the booths or compartments, or shall, during an election, remove, tear down, or deface the cards of instruction posted, as prescribed by this act, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not less than fifty dollars and not exceeding five hundred dollars, or by imprisonment in the county jail for a term not less than one month and not exceeding six months.

Neglect of public officer, how punished.

SEC. 66. Any public officer upon whom any duty is imposed by this act, who shall wilfully neglect or refuse to perform any such duty, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the state prison for a term not less than one year and not exceeding five years.

Many interdictions under penalty.

SEC. 67. No person except a member of the board of election shall receive from any voter a ballot prepared by such voter. No person shall examine such ballot or solicit a voter to show the same. No person shall remove any ballot from any polling-place before the closing of the polls. No person shall apply for or receive a ballot at any election precinct other than the one at which he is entitled to vote. No person shall show his ballot to any person, after marking it, so as to reveal any of the names voted for. No person shall ask another within one hundred feet of the polling-place for whom he intends to vote. No voter shall receive a ballot from any other person than one of the clerks of election, nor shall any other person than a clerk of election deliver such ballot to such voter. No voter shall deliver to the board of election or to any member thereof any ballot other than the one received from the clerk of election. No voter shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Any person violating any provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum of not less than fifty dollars and not exceeding five hundred dollars, or by imprisonment in the county jail for a term not less than one month and not exceeding six months.

Who may contest election.

SEC. 68. Any elector of the proper county may contest the right of any person declared duly elected to an office exercised in and for such county; and also, any elector of a township may contest the right of any person declared duly elected to any office in and for such township, for any of the following causes: First—For malconduct on the part of the board of inspectors, or any member thereof. Second—When the person whose right to the office is contested was not at the time of election eligible to such office.

Irregularities of returns.

SEC. 69. When any election held for an office exercised in and for a county is contested on account of any malconduct on the part of the board of inspectors of any precinct, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct shall change the result as to such office in the remaining vote in the county.

Contest instituted, how.

SEC. 70. When any elector shall choose to contest the right of any person declared duly elected to such office he shall, within forty days thereafter, file with the clerk of the district court a written statement, setting forth specifically: First—The name of the party contesting such election, and that he is a qualified elector of the district, county, or precinct (as the case may be) in which such election is held. Second—The name of the person whose right to the office is contested. Third—The office. Fourth—The particular cause or causes of such contest. Said statement shall be verified by the affidavit of the contesting party, that the matters and things therein contained are true to the best of his knowledge and belief.

Proceedings in contests—District court to decide.

SEC. 71. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that illegal votes were given to the person whose election is contested in the specific precinct or precincts, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of illegal votes unless the party contesting such election shall deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony shall be received of any illegal votes except such as are specified in such list; *provided*, that in all cases of contested elections the district court of the respective districts shall have original jurisdiction to try and determine all such cases, and may, by mandamus or otherwise, obtain all documentary evidence required by either of the parties litigant.

Strict form not essential.

SEC. 72. No statement of the cause of contest shall be rejected, nor the proceedings thereon dismissed, by any court before which such contest may be brought for trial, for want of form, if the particular cause or causes of contest shall be alleged with such certainty as will sufficiently advise the defendant of the particular proceedings or causes for which such election is contested.

Duties of clerk of district court.

SEC. 73. Upon such statement being filed, it shall be the duty of the clerk of the district court to inform the judge thereof, who shall fix the time and place to hear and determine such contested election; and the clerk shall give notice thereof, not less than ten nor more than twenty days from the date of such notice, to the parties contesting, which said notice shall be served by the sheriff of the county upon the respective parties as in other cases.

Process.

SEC. 74. The said clerk shall issue subpoenas and subpoenas duces tecum, as in civil actions at law, for witnesses in such contested election at the request of either party, which shall be served by the sheriff as other subpoenas; and the district court shall have full power to issue attachments to compel the attendance of witnesses who shall fail to attend, who shall have been duly subpoenaed.

County clerk to issue certificates.

SEC. 75. Upon the certified copy of a judgment of the district court, or a certified copy of the judgment of the supreme court, as the case may be, the clerk of the board of county commissioners shall issue a certificate to the person declared to be entitled to such certificate of election.

Fees of county officers.

SEC. 76. The clerk, sheriff, and witnesses shall receive, respectively, the same fees from the party against whom the judgment is given as are allowed for similar services in the district court.

Effect of judgment of court.

SEC. 77. Whenever an election shall be annulled and set aside by the judgment of the district court, and no appeal has been taken therefrom within thirty days, such certificate, if any has been issued, shall thereby be rendered void and the office become vacant.

Contests tried, where.

SEC. 78. In case of any contest in regard to any election to fill the office of district judge, such contest shall be tried in like manner before the district court of the district nearest adjoining thereto.

Who may bring action.

SEC. 79. Any such action may be brought by the attorney-general, in the name of the State of Nevada, upon his own information or upon the complaint of any private party against any person who unlawfully holds any public office within the state; and it shall be the duty of the attorney-general to bring such action whenever he has reason to believe that any such office is unlawfully held or exercised by any person or when he is directed to do so by the governor.

Duties of attorney-general—Order of court.

SEC. 80. Whenever such action is brought the attorney-general, in addition to the statement and cause of action, may also set forth in the complaint the name of the person rightly entitled to the office or franchise, with a statement of his right thereto; and in such case, upon proof by affidavit or otherwise, that the defendant has received fees or emoluments belonging to the office or franchise, by means of his usurpation thereof, an order may be granted by a judge of the supreme court, or a district judge, for the arrest of such defendant and holding him to bail; and thereupon he may be arrested and held to bail in the same manner and with the same effect, and subject to the same rights and liabilities as in other civil actions where the defendant is subject to arrest.

What damages may be recovered.

SEC. 81. If the judgment be rendered upon the right of the person so alleged to be entitled in favor of such person, he may recover by action the damages which he shall have sustained by reason of the usurpation of the office or franchise by the defendant.

One action, when.

SEC. 82. When several persons claim to be entitled or elected to the same office one action may be brought by or against all such persons, in order to try their respective rights to such office.

Contests for senate and assembly.

SEC. 83. In case of contest for senator or assemblyman in any county in this state, the party contesting shall file a statement in the office of the county clerk of the county in which such senator or assemblyman may be a resident, and a concise statement of the grounds upon which he intends to reply, which statement shall be verified by affidavit; and it shall be the duty of the clerk to issue a commission, directed to a justice of the peace of such county, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the

filing of such papers, for the purpose of taking the deposition of such witnesses as the parties to such contest may wish to examine, and notice shall be served upon the person whose right to such office is contested by the sheriff of the county, the same as provided for by law in like cases.

Subpenas to be issued.

SEC. 84. Said justices of the peace shall have power at any time to issue subpenas for witnesses at the request of either party, to be served by the sheriff as other subpenas; and said justice shall have the same power to issue attachments and assess fines against witnesses as given to justices of the peace in other trials instituted before him; and all testimony taken before him during such proceeding shall be in writing, and shall be certified to and forwarded by mail or express, or delivered to the clerk of the county.

County clerk to transmit papers to secretary of state.

SEC. 85. It shall be the duty of said clerk to seal up such depositions, together with the original statement of the grounds of such contest, and a copy of the notice served upon the party whose right is contested, and the commission issued to the justice of the peace, and transmit the same by mail to the secretary of state, indorsing thereon the names of the contesting parties and the branch of the legislature before which such contest is to be tried.

Secretary of state to deliver papers.

SEC. 86. It shall be the duty of the secretary of state to deliver the same, unopened, to the presiding officer of the house in which such contest is to be tried, on or before the second day after the organization of the legislature next after taking such depositions; and such presiding officer shall immediately give notice to said house that said papers are in his possession.

Depositions may be taken, when and how.

SEC. 87. At any time after notice of any contest shall be given, and before the trial of such contested election before the proper branch of the legislature, it may be lawful for either party to such contest to take depositions, to be read on the trial thereof in like manner and under the same rules as are allowed and required in cases of depositions to be read on any trial pending in the district court; and such depositions, when thus taken, shall be sealed up by the officer taking the same and directed to the secretary of state, who shall keep the same unopened, and deliver them to the presiding officer of the house in which such contest is to be tried, to be disposed of by such officer as the depositions specified in the preceding sections.

Contests for state offices, when commenced.

SEC. 88. Proceedings to contest the election of any state officer must be begun within sixty days after the evidence becomes available upon which contest is based.

For other offices.

SEC. 89. Proceedings to contest the election of any county officer, or any officer other than a state officer, must be begun within forty days after the evidence becomes available upon which such contest is based.

When time begins to run.

SEC. 90. Delays arising from any cause tending to prevent the obtaining of evidence upon which a contest is brought shall not cause such contest to fail, but the time provided in this act shall begin to run only from the day

when such evidence may be freely available to the person contesting the election of another, and from and after the passage of this act.

When demand for recount must be made.

SEC. 91. Demands for recount must be made within sixty days from the day of election, or after the passage of this act if the recount is to be had of votes cast at the last general election preceding the passage of this act.

Suits contesting election of state officers, how instituted.

SEC. 92. Any qualified elector of the state may contest the election of any person declared duly elected to any state office within this state by filing a specification of the grounds of such contest with the clerk of the supreme court, which specification shall be verified by oath or affirmation, and it is hereby made the duty of the attorney-general to prosecute such action in the name of the people of the state before the supreme court, who shall have original jurisdiction in such cases; the justices, or any of them, shall have power to issue such process as may be necessary to the complete hearing and final determination of such action.

REFERENDUM

Regulations regarding referendum.

SEC. 93. Whenever ten per centum or more of the voters of this state, as shown by the number of votes cast at the last preceding general election for justice of the supreme court, shall express their wish that any law or resolution made by the legislature be submitted to the vote of the people, they shall file with the secretary of state, not less than four months before the time set for such general election, a petition, which petition shall contain the names and residences of at least ten per centum of the voters of this state, demanding that a referendum vote be had by the people of the state at the next general election upon the bill or resolution on which the referendum is demanded.

More than one petition—Verification.

SEC. 94. The names of the electors so petitioning need not all be upon one petition, but may be contained in one or more petitions; but each petition must be verified by at least one of the voters who has signed such petition, and such voter making such verification must swear that the persons signing said petition are qualified voters of this state. Said petition may be verified upon information and belief.

Secretary of state to certify questions—Same to be published.

SEC. 95. That upon receipt of said petition by the secretary of state he shall file the same, and at the next general election shall submit the questions of the approval or disapproval of said law or resolution to the people of the state to be voted upon at the ensuing election wherein any state or congressional officer is to be voted for, or wherein any questions may be voted upon by the electors of the entire state. And the secretary of state shall certify the said law to the several county clerks in this state, and they shall publish the same in accordance with the provisions of law requiring the said county clerks to publish questions and constitutional amendments which are to be submitted for popular vote.

Form of question.

SEC. 96. That the title of the act shall be set out on the ballot and the question printed upon the ballot for the information of the voter shall be as follows: Shall the act (setting out the title thereof) be approved? And the votes cast upon such question shall be counted and canvassed as are the votes for state officers counted and canvassed.

Operations of referendum.

SEC. 97. When a majority of the electors voting on the question of the approval or disapproval of any act at a state election shall, by their vote, signify approval of the same, such act shall stand as the law of the state, and shall not be overruled, annulled, set aside, suspended, or in any way made inoperative, except by a direct vote of the people. When a majority shall so signify disapproval, the law or resolution so disapproved shall be void and of no effect.

MISCELLANEOUS PROVISIONS**Words construed.**

SEC. 98. Words in this act in the masculine gender shall be construed to comprehend the feminine gender in compliance with the constitutional amendment granting suffrage to women.

Nonpartisan offices—No party affiliation printed.

SEC. 99. No words designating the party affiliation of any candidate for a judicial or school office shall be printed upon the ballot.

School elections.

SEC. 100. School trustees shall be elected in accordance with the provisions of chapter six of an act entitled "An act concerning public schools, and repealing certain acts relating thereto," approved March 20, 1911.

Electors in military service.

SEC. 101. Electors of the State of Nevada in the military service of the United States may, when called into such service, vote in accordance with the provisions of the act approved March 14, 1899.

Right to vote at school election, how obtained.

SEC. 9. No person shall be allowed to vote at any school election unless he or she is a resident of the district and his or her name appears upon the official registry list of the voting precinct or precincts including the district for the last preceding general election, or for the last preceding town or city election; *provided*, that any citizen of the United States who shall have resided in this state six months, and in the school district thirty days next preceding the day of election, and whose name is not upon the said official registry list, may apply to the clerk of the board of school trustees, or to a person authorized by the trustees of the district to act as registry agent, not more than ten nor less than five days prior to the day of election, to have his or her name registered. *Sec. 9, chap. 7, Stats. 1913, 561, as amended, Stats. 1915, 308.*

Stats. 1913, 493, chap. 2, sec. 1. Cited, *Turner v. Fogg*, 39 Nev. 413 (159 P. 56).

This law of 1913 (Stats. 1913, c. 284), subc. 3, sec. 7, requiring a candidate filing nomination papers for the primary election to make affidavit that he will not withdraw, does not prevent a candidate who has filed his papers from withdrawing prior to the election, but he cannot withdraw where he is without opposition and becomes the nominated candidate by virtue of Stats. 1913, c. 284, subc. 3, sec. 14, subd. 9, providing that the names of candidates who are without opposition shall not be printed on the primary ballot, but shall be certified as the party nominees. *State ex rel. Thatcher v. Brodigan*, 37 Nev. 458 (142 P. 520).

Where, in such case, one of the two opposing nominees withdrew after the time for filing nomination papers, but before the primary election, the other nominee became the candidate by operation of Stats. 1913, c. 284, subc. 3, sec. 14, subd. 9, and the secretary of state must certify his name as the candidate of his party, though he filed withdrawal papers before primary election, but after the withdrawal of the other candidate for nomination. *Id.*

Under this law of 1913 (Stats. 1913, c. 284), subc. 3, sec. 7, providing that a candidate at a primary election shall declare in his nomination papers that he intends to support the

principles of the party of which he is a candidate, and that he voted for a majority of the candidates of such party at the last election, one who has filed nomination papers as a candidate of a designated party at the primary election cannot file another nomination paper designating himself as a candidate of another party for the same office. *Id.*

One who files nomination papers under the election law of 1913 (Stats. 1913, c. 284), subc. 3, sec. 9, providing that the candidate filing such papers "shall pay" to the secretary of state "a fee for such filing," is not entitled to a return of such fee on his withdrawal as a candidate prior to the primary election, though such a fee is required to be paid into the state treasury. *Id.*

Stats. 1913, 49, c. 61, sec. 7, subc. 3, providing that whenever a secular act is to be performed on a particular day, and that day is a nonjudicial one, the act may be performed on the next judicial day, does not permit a nominee at a primary election to be held September 1 to file his papers on August 3, though August 2 falls on Sunday; section 7 of subchapter 3 of this law providing that such papers shall be filed at least thirty days prior to the primary election. *Id.*

Subc. 3, sec. 9. See *State ex rel. Thatcher v. Brodigan*, 37 Nev. 458 (142 P. 520).

Subc. 3, sec. 9. This section imposing upon candidates for state offices a fee of \$100 as a condition to filing nomination papers so that their names will go on the ballot, is valid, being a regulation, and not an additional qualification, and it being within the scope of the legislature's power to impose a substantial fee to prevent persons from placing their names on the ballot for fraudulent purposes, such as to draw strength in small localities from one candidate to benefit another. *State ex rel. Riggle v. Brodigan*, 37 Nev. 492, 502 (143 P. 238; L. R. A. 1915B, 197).

Subc. 3, sec. 14, subd. 9. See *State ex rel. Thatcher v. Brodigan*, 37 Nev. 458 (142 P. 520).

Subc. 3, sec. 17. Cited, *Turner v. Fogg*, 39 Nev. 413 (159 P. 56).

Under subc. 3, sec. 18, of this act, relating to primary elections, and subc. 2, secs. 4, 5, relating to registration, an elector who has registered, so as to be entitled to vote at a primary election, by designating his political party and having the same entered on the registry, cannot subsequently require the registry agent to change such designation. *State ex rel. Thatcher v. Keith*, 37 Nev. 452, 454-456 (142 P. 532; Ann. Cas. 1917A, 1276).

Under the above-quoted sections, where an elector has registered, but has failed to indicate his politics or party designation, he may, prior to the time fixed for closing registration, apply to the registry agent and have an entry made on the registry of his politics or party designation so as to entitle him to vote at the primary election. *Id.*

As used in subc. 3, sec. 18, of this act the word "heretofore" relates to the time in which an elector may lawfully be registered for the primary election. *Id.*

Sec. 27. See *State ex rel. Busteed v. Harmon*, 38 Nev. 5 (143 P. 1183).

Sec. 28, subc. 4. See *McBride v. Griswold*, 38 Nev. 56, 59, 60, 62 (146 P. 756).

Rev. Laws, 1513, sec. 28, subc. 4, providing for recount of votes by the board of county commissioners was not repealed by this act under Const. art. 4, sec. 21; since a general statute will not repeal particular provisions of a former act unless the two conflict irreconcilably. *McBride v. Griswold*, 38 Nev. 56, 59, 60 (146 P. 756).

Where various remedies as to election contests were afforded, at common law, under the code of civil procedure, this law, and under Rev. Laws, 1513, these remedies are concurrent, not being incompatible, and the party seeking relief may use any. *Id.*

An Act to define judicial officers and offices and school officers and offices, and to declare them nonpartisan, and to provide that the names of candidates for such offices shall appear alike upon all ballots at primaries and general elections.

Approved March 22, 1917, 249

Judicial and school offices to be nonpartisan.

SECTION 1. The words and phrases of this act shall, unless such construction be inconsistent with the context, be construed as follows:

(a) The words "judicial officers," any justice of the supreme court, any

The votes cast upon such question shall be counted and canvassed as the votes for county officers are counted and canvassed.

Effect of majority vote.

SEC. 5. When a majority of the electors of such county voting upon the question submitted shall by their vote signify approval of such law or resolution, such law or resolution shall stand as the law of the state, and shall not be overruled, annulled, set aside, or in any way made inoperative, except by direct vote of such county. When a majority of the electors of such county shall so signify disapproval, the law or resolution so disapproved shall be void and of no effect.

Special election, when.

SEC. 6. After the filing of a referendum petition with the county clerk as herein provided, upon petition to the county commissioners of such county so to do, signed by 40 per centum of the qualified electors of such county, as shown by the number of votes cast at the last preceding general election for county recorder, duly verified as provided herein, the board of county commissioners shall call a special election for the purpose of submitting such question to the electors of such county to be held within forty days after the petition requesting a special election shall have been filed with said board.

413. Cited, Pershing County v. District Court, 43 Nev. —(181 P. 962).

An Act providing for the nomination and election of United States senators, and repealing sections 1, 2, 3, and 4 of chapter 9 of "An act relating to elections and removals from office," approved March 31, 1913.

Approved March 6, 1915, 83

Election of U. S. senator, when.

SECTION 1. At the general election next preceding the expiration of the time for which any United States senator was elected or appointed to represent the State of Nevada in the United States senate, candidates for United States senator may be nominated and elected in the same manner as provided by law for the nomination and election of state officers.

Nomination certificate to be filed.

SEC. 2. Certificates of nomination of candidates for United States senator shall be filed with the secretary of state of Nevada, who shall certify the names of all candidates as shown therein to the various county clerks as now required by law in case of candidates for state officers, and the several county clerks in preparing the ballots to be voted for at any such general election, shall place thereon the names of all such candidates under the words "U. S. Senator—Vote for One," and there shall be a margin at the right-hand side of these names at least one-half inch wide, where the voter may indicate his choice of said candidates by making a cross or X.

Governor may appoint, when.

SEC. 3. In case of a vacancy in the office of United States senator caused by death, resignation, or otherwise, the governor of Nevada may appoint some qualified person to fill said vacancy, who shall hold office until the next general election, and until his successor shall be elected and qualified.

Repeal.

SEC. 4. Sections 1, 2, 3, and 4 of chapter 9 of "An act relating to elections and removals from office," approved March 31, 1913, are hereby repealed.

An Act to provide employed electors opportunities to vote.

Approved February 24, 1913, 14

Certain electors given holiday.

SECTION 1. No person entitled to vote at any election held in this state shall, upon the day of such election, be employed in any manufacturing, mechanical or mercantile establishment, except such establishments as may lawfully conduct their business on a legal holiday.

Electors given three hours.

SEC. 2. Every person entitled to vote at any such election held in this state who is employed in such an establishment as may lawfully conduct its business on a legal holiday and on election day, must be given on election day a leave of absence for a period of three consecutive hours after the opening and before the closing of the polls in the voting precinct or town in which he is entitled to vote, if he shall make application for leave of absence during such period.

Penalty.

SEC. 3. Any owner, superintendent or overseer, or other person, in any manufacturing, mechanical or mercantile establishment, who employs or permits to be employed any person therein on the day of any election held in this state in violation of the provisions of section 1 of this act, or who violates the provisions of section 2 of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than twenty-five days nor more than fifty days, or both such fine and imprisonment.

Stats. 1915, 453. This act does not contravene art. 4, sec. 17 of the constitution. *Turner v. Fogg*, 39 Nev. 406, 409-413 (159 P. 56).

Section 8. When a petition fails to show that authorized representatives of the Progressive party sought to preserve the rights of their party under this section, held that petitioners for writ of prohibition cannot question the validity of section 3, providing for apportionment on the basis of vote for congressman at the last election. *Id.*

Section 3. See *Turner v. Fogg*, 39 Nev. 406, under section 8 of this act.

On an application on the eve of election to annul this statute, the court will not speculate on the effect of possible contingencies on the validity of the act nor annul it because contingencies may arise under section 11 of such act which would make the act impossible of enforcement. *Id.*

Section 11. See *Turner v. Fogg*, 39 Nev. 406 (159 P. 56).

Sections 12 and 14, requiring electors to register their party affiliation as a prerequisite to the right to vote at primary election, is a reasonable regulation and valid exercise of the legislative power. *Id.*

Section 12. Under this section and section 14, which was not repealed by Stats. 1915, 464, sec. 8, the names of electors which appear upon the certified registration list as copied from the register of the last general election, together with the names that appear on the supplemental list, constitute the list of electors qualified to vote at a primary election. *Id.*

Section 14. See *Turner v. Fogg*, 39 Nev. 406, under section 12 of this act.

Stats. 1915, 463, sec. 44, provides that should a vacancy occur in the nominees for any office, it may be filled before election day by the committee to which such power has been delegated, and by section 26 of this act it is provided that vacancies in nomination occurring after any party convention shall be filled by the party committee, etc. The Democratic county convention nominated a candidate for clerk and treasurer, and on his declination took no further action and left the place blank in the certificate of nomination, and adjourned without delegating any authority to its committee, but the executive board of the committee filed a certificate of nomination. Held, that the filing of such certificate

was unauthorized, and that mandamus would issue to compel the county clerk to exclude from the ballots at a coming general election the name of the candidate contained in such certificate. *State ex rel. Haight v. Wilson*, 40 Nev. 131, 134 (161 P. 306).

Section 44. See *State ex rel. Haight v. Wilson*, 40 Nev. 131, under section 26, Stats. 1915, 453.

Stats. 1917, 385, sec. 101. The provision of Const. art. 4, sec. 17, that no law shall be revised or amended by reference to its title only, does not render invalid the provisions of this section that electors in the military service of the United States may vote in accordance with Stats. 1899, 108, which was repealed by Stats. 1913, 568; revival by title not being prohibited; for an "amendment" is an alteration effecting a change in the draft or form or substance of a law already enacted or of a bill proposed for enactment, but, when the legislative body attempts to revise, it thereby assumes to make additions or changes or corrections to alter or reform something then in force and effect, and "revision" in the legislative sense applies only to a measure, bill, or law then having existence, life, and force, and cannot, in the nature of things, apply to a nullified or repealed act; and the term "revive," as applied to legislative proceedings, signifies the reconference of validity, force, and effect, at least the reconference of validity, force, and effect as the revived measure, law, or bill formerly possessed. *Maclean v. Brodigan*, 41 Nev. 463, 473, 479, 480 (172 P. 375).

Where one act of the legislature specifically adopts the provisions of another act upon the same general subject, the effect is to incorporate the adopted act, making it effective for the designated purpose, and that the adopted act has been repealed is immaterial. *Id.*

This section is not void for discrimination against electors in the naval service, or conscripted men in the military service, since "military service" includes every branch of service in either the army or the navy of the United States. *Id.*

EMPLOYER AND EMPLOYEE

1915. Under this section, where a servant, a citizen and resident of California, executed in California a full and fair release of his master from liability for injuries received in his employment in Nevada, which was valid in California, it was a valid defense to an action by him in Nevada for such injuries, notwithstanding Rev. Laws, 5652, providing that no exceptions of any insurance, relief benefit, or indemnity by the person entitled thereto shall constitute any bar to any personal injury action, for, the cause of action being statutory, and being completely barred in California, it was completely extinguished everywhere. *Leach v. Mason Valley Mines Co.*, 40 Nev. 143, 148, 149 (161 P. 513).

Stats. 1903, 207, sec. 1, which provides that "it shall be unlawful for any person, firm, or corporation to make or enter into any agreement, either oral or in writing, by the terms of which any employee of such person, firm, or corporation, or any person about to enter the employ of such person, firm, or corporation, as a condition for continuing or obtaining such employment shall promise or agree not to become or continue a member of a labor organization, or which promise or agree to become or continue a member of a labor organization," deprives the employer of the liberty to contract as to matters which may be vital to him, and therefore is invalid under the constitutional provision that "no one shall be deprived of life, liberty, or property without due process of law." *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 501, 513-516.

An Act limiting the hours of labor of females employed in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, or restaurant, or by any express or transportation company; compelling each employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, to provide suitable seats for all female employees, and to permit them to use such seats when they are not engaged in the active duties of their employment; and providing a penalty for failure, neglect, or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman, or any other agent of any such employer to violate the provisions of this act.

Approved February 14, 1917, 16

Period of work limited.

SECTION 1. No female shall be employed in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, public lodging-house, apartment house, place of amusement, or restaurant, or by any express or transportation company in this state, more than eight hours during any one day, or more than fifty-six hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or fifty-six hours during any one week; *provided, however*, that the provisions of this section in relation to hours of employment shall not apply to nor affect the harvesting, curing, canning, or drying of any variety of perishable fruit or vegetable, nor to nurses, nor to nurses in training in hospitals.

Seats to be provided.

SEC. 2. Every employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, or restaurant, or other establishment, employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

Who to enforce act.

SEC. 3. The district attorneys of the respective counties of this state, and the attorney-general of this state, shall enforce the provisions of this act, and said district attorneys, and said attorney-general and their deputies and agents shall have all powers and authority of sheriffs or other peace officers to make arrests for violations of the provisions of this act, and to serve all processes and notices thereunder throughout the state.

Penalty for noncompliance.

SEC. 4. Any employer who shall permit or require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to provide suitable seats as provided in section two of this act, or who shall permit or suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished for a first offense, by a fine of not less than twenty-five dollars nor more than fifty dollars; for a second offense, by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars; or by imprisonment for not more than sixty days, or by

both such fine and imprisonment. All fines imposed and collected under the provisions of this act shall be paid into the state treasury and credited to the state permanent school fund of this state.

An Act providing that any person, firm, association, or corporation, or agent, superintendent, or manager thereof employing special agents, detectives, or so-called spotters shall, before disciplining or discharging any employee upon a report by such special agent, detective, or so-called spotters, give notice and accord a hearing to such employee upon his request therefor, and providing that such accused employee shall have the opportunity to be confronted with the person making such report, and providing for the punishment for the violation thereof.

Approved February 27, 1915, 61

Concerning "spotters"—Employee to be confronted with accuser.

SECTION 1. It shall be unlawful for any person, firm, association, or corporation, or agent, superintendent, or manager thereof, employing any special agent, detective, or person commonly known as "spotter" for the purpose of investigating, obtaining and reporting to the employer, his agent, superintendent, or manager, information concerning his employees, to discipline or discharge any employee in his service, where such act of discipline or the discharge is based upon a report by such special agent, detective, or spotter, which report involves a question of integrity, honesty, or a breach of rules of the employer, unless such employer, his agent, superintendent, or manager shall give notice and accord a hearing to the employee thus accused, when requested by the said employee, at which hearing said accused employee shall have opportunity to be confronted with the person making such report and shall have the right to furnish testimony in his defense.

Penalty for violation.

SEC. 2. Any person, corporation, firm, association, or employer violating any provision of this act shall be liable to the State of Nevada for a penalty of five hundred dollars for each offense; and such penalty shall be recovered and suit brought in the name of the State of Nevada in a court of proper jurisdiction by the attorney-general, or under his directions by the district attorney in any county having proper jurisdiction.

An Act regulating the payment of wages or compensation in private employments, providing for regular pay-days therein, making it the duty of the labor commissioner and district attorneys, in this state, to enforce its provisions, and providing penalties for violations of this act, and other matters relating thereto.

Approved March 19, 1919, 121

Semimonthly pay-days established.

SECTION 1. All wages or compensation of employees in private employments shall be due and payable semimonthly, that is to say, all such wages or compensation earned and unpaid prior to the first day of any month, shall be due and payable not later than the fifteenth day of the month following that in which such wages or compensation were earned; and all wages or compensation earned and unpaid prior to the sixteenth day of any month shall be due and payable not later than the last day of the same month; but nothing contained herein shall be construed as prohibiting the contracting for the payment or of the payment of wages at more frequent periods than semimonthly. Every agreement made in violation

of this section, except as hereinafter provided, shall be null and void; except any employee shall be entitled to payment of such wages or compensation for the period during which the same were earned.

The words "private employments," used in this act, shall mean all employments other than those under the direction, management, supervision, and control of this state or any county, city, or town therein, or any office or department thereof.

Salary, when payable.

SEC. 2. Whenever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately; but whenever an employee resigns or quits his employment, the wages and compensation earned and unpaid at the time of such resignation or quitting, shall be paid within twenty-four hours after a demand therefor.

Should any employer fail to pay within three (3) days after the same shall become due and payable, under the provisions of this act, any wages or compensation, without deduction, of any employee, who is discharged from or who resigns or quits his employment, then as a penalty for such nonpayment of such wages or compensation, the same shall continue from the date of the cessation of employment at the same rate until paid; *provided*, in no case shall such wages or compensation continue for more than thirty (30) days; *and provided further*, any employee who secretes or absents himself to avoid payment of such wages or compensation, or refuses to accept the same when fully tendered to him, shall not be entitled to the payment thereof for such time as he so secretes or absents himself to avoid such payment.

Notice of pay-days to be posted.

SEC. 3. Every employer shall establish and maintain regular pay-days as herein provided and shall post and maintain posted notices printed in plain type or written in plain script in at least two (2) conspicuous places where such notices can be seen by the employees, setting forth the regular pay-days as herein prescribed and place of payment, which shall be within the justice court precinct in which such services were performed.

In case an employee shall be absent at the time and place of the payment of such wages or compensation, due and payable as herein prescribed, *provided* he does not secrete or absent himself to avoid such payment as aforesaid, he shall be paid the same within five (5) days after making written demand therefor.

The payment of such wages or compensation shall be made in lawful money of the United States, or by a good and valuable negotiable check or draft payable on presentation thereof at some bank or established place of business without discount in lawful money of the United States, and not otherwise, and shall be payable at the place designated in the notice prescribed herein.

Hospital or savings dues may be retained.

SEC. 4. Nothing in this act shall be so construed as to preclude the withholding from the wages or compensation of any employee any dues, rates or assessments becoming due to any hospital association, or to any relief, savings, or other department or association, maintained by the employer or employees for the benefit of the employees, or poll-tax, or other deductions authorized by written order of an employee; *provided*, at the time of payment of such wages or compensation, such employee shall be furnished by the employer an itemized list showing the respective deductions made from the total amount of such wages or compensation.

Each provision of act independent.

SEC. 5. Should any provision of this act be judicially decreed, or declared null or void, the remaining provisions thereof shall not be affected thereby, but the same shall be given full force and effect.

Penalty for violation.

SEC. 6. Any employer who fails or refuses to pay any of the wages or compensation of an employee, in whole or in part, as in this act provided, or violates any of the remaining provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty (\$50) dollars nor more than three hundred (\$300) dollars.

Labor commissioner to enforce.

SEC. 7. It shall be the duty of the labor commissioner to cause this act to be duly enforced and upon notice from him the district attorney of any county in which a violation of this act has occurred, shall prosecute the same according to law.

Private agreements permitted.

SEC. 8. Nothing in this bill, however, shall be construed as to mean that on any special occasion where it appears to be satisfactory and beneficial to both employer and employee, that they shall not have the right to agree either verbally or in writing, as to where and at what time, other than every fifteen days, wages shall be paid; *provided*, that it shall be unlawful for any employer to require any employee to enter into any such agreement as a condition to entering into or remaining in his service.

An Act relating to the protection and health of employees and providing penalties for the violation of its provisions and other matters relating thereto.

Approved April 1, 1919, 403

Phrases and terms defined.

SECTION 1. The following terms, as used in this act, shall, unless a different meaning is plainly required by the context, be construed as follows:

(1) The phrase "place of employment" shall mean and include every place, whether indoors or out, or elsewhere, and the premises appurtenant thereto, where, either temporarily or permanently, any industry, trade, work or business, is carried on, or where any process or operation directly or indirectly related to any industry, trade, work or business, is carried on, including all construction work, and where any person is directly or indirectly employed by another for direct or indirect gain or profit, but shall not include any place where persons are employed solely in household domestic service, or any place of employment concerning the safety of which jurisdiction may have been vested by law heretofore or hereafter in any other commission or public authority.

(2) The term "employment" shall mean and include any trade, work, business, occupation or process of manufacture, or any method of carrying on such trade, work, business, occupation or process of manufacture, including construction work, in which any person may be engaged, except where persons are employed solely in household domestic service.

(3) The term "employer" shall mean and include every person, firm, voluntary association, corporation, officer, agent, manager, representative or other person having control or custody of any employment, place of employment or of any employee.

(4) The term "employee" shall mean and include every person who may

be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go to work or be at any time in any place of employment.

(5) The term "order" shall mean and include any decision, rule, regulation, direction, requirement or standard of the commission or any other determination arrived at or decision made by such commission under the safety provisions of this act.

(6) The term "general order" shall mean and include such order, made under the safety provisions of this act, as applies generally throughout the state to all persons, employments or places of employment, or all persons, employments or places of employment of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(7) The term "local order" shall mean and include any ordinance, order, rule or determination of any board of supervisors, city council, board of trustees or other governing body of any county, city and county, city, or any school district or other public corporation, or an order or direction of any other public official or board or department upon any matter over which the industrial accident commission has jurisdiction.

(8) The terms "safe" and "safety," as applied to an employment or a place of employment, shall mean such freedom from danger to the life or safety of employees as the nature of the employment will reasonably permit.

(9) The terms "safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.

Employer to further safety.

SEC. 2. Every employer shall furnish employment which shall be safe for the employees therein and shall furnish a place of employment which shall be safe for employees therein, and shall furnish and use such safety devices and safeguards, and shall adopt and use such practices, means, methods, operation and processes as are reasonably adequate to render such employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of such employees.

Same.

SEC. 3. No employer shall require, permit or suffer any employee to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide and use safety devices and safeguards or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life and safety of such employees, and no such employer shall maintain any place of employment that is not safe.

Unsafe construction prohibited.

SEC. 4. No employer, owner or lessee of any real property in this state shall construct or cause to be constructed any place of employment that is not safe.

Employee not to remove safety device.

SEC. 5. No employee shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment, or fail or neglect to do every

other thing reasonably necessary to protect the life and safety of such employees.

Duties of industrial commission.

SEC. 6. It shall be the duty of the Nevada industrial commission and they shall have full power, jurisdiction and authority over all employments not within the jurisdiction of the department of the mining inspector, labor commissioner, and railroad and public service commissions:

(1) To declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law or lawful order.

(2) To fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as practical, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of employees in employments and places of employment.

(3) To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

(4) To require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may reasonably demand.

(5) The commission may, upon application of any employer, or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the commission for an extension of time, which the commission shall grant if it finds such an extension of time necessary.

(6) Whenever the commission shall learn or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee, it may, of its own motion, or upon complaint, summarily investigate the same, with or without notice or hearings, and after a hearing upon such notice as it may prescribe, the commission may enter and serve such order as may be necessary relative thereto.

(7) To appoint advisers who shall, without compensation, assist the commission in establishing standards of safety, and the commission may adopt and incorporate in its general orders such safety recommendations as it may receive from such advisers.

Employers and employees to cooperate.

SEC. 7. Every employer, employee and other person shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in connection with the matters herein specified, or in any way relating to or affecting safety of employments or places of employment, or to protect the life and safety of employees in such employments or places of employment, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation.

Order of commission to be evidence.

SEC. 8. Every order of the commission, general or special, its rules and regulations, findings and decisions, made and entered under the safety provisions of this act, shall be admissible as evidence in any prosecution for the violation of any of the said provisions and shall, in every such prosecution, be presumed to be reasonable and lawful and to fix a reasonable and

proper standard and requirement of safety, unless, prior to the institution of the prosecution of such violation or violations, proceedings for a rehearing thereon or a review thereof shall have been instituted and not then finally determined.

Penalty for violation.

SEC. 9. Every employer, employee or other person who, either individually or acting as an officer, agent or employee of a corporation or other person, violates any safety provision contained in sections two, three, four or five of this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof, or who, directly or indirectly, knowingly induces another so to do is guilty of a misdemeanor. In any prosecution under this section it shall be deemed prima facie evidence of a violation of any such safety provision, that the accused has failed or refused to comply with any order, rule, regulation or requirement of the commission relative thereto.

Each violation separate and distinct offense.

SEC. 10. Every violation of the provisions contained in sections two, three, four, or five of this act, or any part or portion thereof, by any person or corporation is a separate and distinct offense, and, in the case of a continuing violation thereof, each day's continuance thereof shall constitute a separate and distinct offense.

Not to deprive county or municipal board of jurisdiction.

SEC. 11. Nothing contained in this act shall be construed to deprive the board of county commissioners of any county, or city and county, the board of trustees of any city, or any other public corporations or board or department, of any power or jurisdiction over or relative to any place of employment.

EMPLOYMENT AGENCIES

An Act relating to employment agencies, requiring a license for the conducting of such agencies and providing a penalty for the failure to secure such license; prescribing rules and regulations for the conducting of employment agencies and requiring a bond to insure a compliance with the same; making it the duty of the labor commissioner to enforce the provisions of this act; fixing penalties for the violation of this act, and other matters relating thereto.

Approved March 28, 1919, 291

Terms defined.

SECTION 1. When used in this section the following terms are defined as herein specified:

The term "person" means and includes any individual, firm, company, corporation, association, manager, contractor, subcontractor, or their agents or employees.

The term "employment agency" means and includes the business of conducting, as owner, agent, manager, contractor, subcontractor, or in any other capacity, an intelligence office, domestic and commercial employment agency, general employment bureau, shipping agency, or any other agency for the purpose of procuring or attempting to procure help or employment for persons seeking employment, or for the registration of

persons seeking such employment or help, or for giving information as to where and of whom such help or employment may be secured, where a fee or other valuable consideration is exacted, or attempted to be collected for such services, whether such business is conducted in a building or on a street or elsewhere.

The term "labor commissioner" shall mean the labor commissioner of the State of Nevada.

State license.

SEC. 2. No person shall open, keep, operate or maintain an employment agency in this state without first obtaining a license therefor as provided in this act from the labor commissioner. Such license, together with a copy of this act, shall be posted in a conspicuous place in each and every employment agency. Any person who shall open, keep, operate or maintain such employment agency without first procuring said license shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not to exceed six (6) months, or by a fine not exceeding three hundred (\$300) dollars, or by both such fine and imprisonment.

License, how procured.

SEC. 3. An application for such license shall be made to the labor commissioner. Such application shall be in written form and shall state the name and address of the applicant; the street and number of the building or place where the business is to be conducted, and the business or occupation engaged in by the applicant for at least two years immediately preceding the date of the application. Such application shall be accompanied by the affidavits of at least two reputable residents of the city to the effect that the applicant is a person of good moral character.

What license shall show.

SEC. 4. Every license shall contain the name of the person licensed, a designation of the city, street, number of the house in which the person licensed is authorized to carry on said employment agency, and the number and date of such license. Such license shall not be valid to protect any other than the person to whom it is issued or any place designated in the license.

Disposition of fees—Bond.

SEC. 5. Every person licensed under the provisions of this act to carry on the business of an employment agency shall pay to the labor commissioner a fee of twenty-five (\$25) dollars before such license is issued. He shall also deposit before such license is issued, with the clerk of the city in every city where there is a clerk, or clerk of the county, a bond in the penal sum of one thousand dollars with two or more sureties or a duly authorized surety company, to be approved by the labor commissioner.

The bond executed shall be payable to the people of the State of Nevada and shall be conditioned that the person applying for the license will comply with this act and shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud, or deceit, or any unlawful act or omission of any licensed person, made, committed, or omitted in the business conducted under such license, or caused by any other violation of this act in carrying on the business for which such license is granted.

If at any time the sureties or any of them shall become irresponsible, the person holding such license shall, upon notice of the labor commissioner, give a new bond, subject to the provisions of this section. The failure to give a new bond within ten days after such notice shall operate

as a revocation of such license and the license shall thereupon be returned to the labor commissioner, who shall destroy the same.

Claims against licensee.

SEC. 6. All claims or suits brought in any court against the licensed person may be brought in the name of the person damaged upon the bond deposited with the city or county, as the case may be, by such licensed person, and may be assigned as other claims for damages in civil suits. The amount of damages claimed by plaintiff, and not the penalty named in the bond, shall determine the jurisdiction of the court in which the action is brought. Where such licensed person has departed from the state with intent to defraud his creditors or with intent to avoid a summons in an action brought under this section, service shall be made upon the surety as prescribed in the code of civil procedure. A copy of such summons shall be mailed to the last known postoffice address of the residence of the licensed person, and the place he conducted such employment agency, as shown by the records of the labor commissioner's office. Such service thereof shall be deemed to be made when not less than the number of days shall have intervened between the dates of service and the return of the same as provided by the civil procedure for the particular court in which suit has been brought.

Licensee to keep register.

SEC. 7. It shall be the duty of every licensed person to keep a register in which shall be entered the date of application for employment; the name and address of the applicant to whom employment is promised or offered, or to whom information or assistance is given in respect to such employment; the amount of the fee received, and, whenever possible, the name and addresses of former employers or persons to whom such applicant is known. Such licensed person shall also enter in the same or in a separate register the name and address of every applicant for help, the date of such application, kind of help requested, the conditions of employment, the hours of labor required and the rate of wages to be paid. No such licensed persons shall make any false entry in such registers.

Copy of register, when.

SEC. 8. All registers, books, records and other papers kept by the licensed person pursuant to this act shall be open at all reasonable hours to the inspection of the labor commissioner, and every licensed person shall furnish to the labor commissioner on request a true copy of such register, books, records and papers, or any portion thereof, and shall make such reports as the labor commissioner may prescribe.

Duties of licensee to applicants.

SEC. 9. It shall be the duty of every licensed person to give to every applicant for employment from whom a fee shall be received a receipt in which shall be stated the name and address of such employment agency, the name and address of the party to whom the applicant is sent for employment, the name of the applicant, the date, the amount of the fee, the kind of work or service to be performed, the general conditions of employment, including, among other things, the hours of service, the rate of wages or compensation, whether or not board or lodging is to be furnished, the cost of transportation and whether or not it is to be paid by the employer, the time of such service if definite, and if indefinite to be so stated, and the name of the person authorizing the hiring of such applicant. There shall be printed on the face of the receipt in prominent type

the following: "This Agency Is Licensed by the Labor Commissioner of Nevada." All receipts shall be made and numbered in original and duplicate. The original shall be given to the applicant paying the fee and the duplicate shall be kept on file at the employment agency.

Regarding fees from applicants.

SEC. 10. No such licensed person shall accept a fee from any applicant for employment, or send out any applicant for employment without having obtained, either orally or in writing, a bona-fide order therefor. In case the applicant paying a fee fails to obtain employment, such licensed agency shall repay the amount of said fee to such applicant upon demand being made therefor; *provided*, that in cases where the applicant paying such fee is sent beyond the limits of the city in which the employment agency is located, such licensed agency shall repay in addition to the said fee any actual expenses incurred in going to and returning from any place where such applicant has been sent; *provided, however*, where the applicant is employed and the employment lasts less than seven days by reason of the discharge of the applicant, the employment agency shall return to said applicant the fee paid by such applicant to the employment agency.

Licensee not to promulgate false information.

SEC. 11. No licensed person conducting an employment agency shall publish or cause to be published any false or fraudulent or misleading information, representation, notice, or advertisement; all advertisements of such employment agency by means of cards, circulars, signs, or in newspapers and other publications, and all letterheads, receipts, and blanks shall be printed and contain the licensed name and address of such employment agency, and no licensed person shall give any false information, or make any false promise or false representation concerning an engagement or employment to any applicant who shall register or apply for employment or help.

Regarding applications from children.

SEC. 12. No licensed person shall accept any application for employment made by or in behalf of any child, or shall place or assist in placing any such child in any employment whatever in violation of the child-labor law. No licensed person shall send an applicant to any place where a strike, lockout or other labor trouble exists without notifying the applicant of such conditions, and shall in addition thereto enter a statement of such facts upon the receipt given to such applicant. No licensed person shall divide fees with an employer, or an agent of an employer, or with any superintendent, manager, foreman, or other employee of any person, firm, or corporation to which help is furnished.

Labor commissioner to furnish blank books.

SEC. 13. The labor commissioner shall furnish to each licensed employment agency blank books upon which their records shall be kept as provided in this act, together with forms of receipts and necessary blanks upon which reports shall be made to the labor commissioner.

Labor commissioner to account for moneys.

SEC. 14. The labor commissioner shall, at the end of each month, make an itemized account of all moneys received by him from license fees under the provisions of this act, and pay the same to the state treasurer, to be held in a separate fund known as the employment agency fund and to be used for expenses incurred in printing blanks, books, and receipts to be furnished to such employment agencies by said labor commissioner.

Labor commissioner to enforce act.

SEC. 15. It shall be the duty of the labor commissioner to enforce this act, and when informed of any violations thereof it shall be his duty to report the fact to the district attorney of the county in which such violation occurred and said district attorney shall prosecute the same in accordance with the law.

Penalties.

SEC. 16. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not to exceed six (6) months, or by a fine not exceeding three hundred (\$300) dollars, or by both such fine and imprisonment.

FEDERAL TOWN SITES

1986. Under similar statute (Cutting, 346), prohibition is a proper remedy to prevent the sale of the lots where the failure to legally convey to the proper owners is due to the imposition of excessive charges by the town-site trustee as a condition precedent thereto. *State ex rel. Schloss v. Stevens*, 34 Nev. 146, 147, 152, 153 (116 P. 605).

Where a town-site trustee, on the refusal of a lot claimant to pay excessive charges imposed, proceeds to sell the lot, there is no other adequate remedy affecting the right to the remedy by writ of prohibition; individual suits to settle the rights of the claimant not being an adequate remedy. *Id.*

1987. See *State ex rel. Schloss v. Stevens*, 34 Nev. 146, under section 1986.

FEEBLE-MINDED CHILDREN

An Act to provide for the care and education of feeble-minded children, and other matters properly connected therewith.

Approved April 1, 1913, 576

Support of.

SECTION 1. The superintendent of public instruction is authorized to make arrangements with the director of any institution for the feeble-minded in California, or Utah, or other states, for the admission, support, education and care of feeble-minded children of this state; and for that purpose is hereby empowered to make all needful contracts and agreements to carry out the provisions of this act.

Superintendent of public instruction to provide for care.

SEC. 2. Upon the application under oath of a parent, relative, guardian or nearest friend of any feeble-minded child, resident of this state, setting forth that by reason of deficient mental understanding, such child is disqualified from being taught by the ordinary process of instruction or education, and that such parent, guardian, relative or nearest friend is unable to pay for his or her support, education and instruction in any of the aforesaid institutions, and filing the same with the board of county commissioners of the proper county, and such board shall be satisfied of the truth thereof, and such board shall have made application to the superintendent of public instruction for that purpose, it shall be the duty of the superintendent of public instruction to issue a certificate to that effect, which certificate being produced, shall be the authority of any such institutions aforesaid for receiving any such feeble-minded child; *provided*, that

in case of any inmate of the state orphans' home being adjudged feeble-minded, the superintendent of public instruction is authorized to receive such child from the board of directors of said home and shall make provision for such child in the same manner as if received from a board of county commissioners.

Disposition of children.

SEC. 3. All children who are qualified to enter such institution as is named in section 1 of this act, that are free from offensive or contagious diseases, and are unable to pay for their support, education and instruction in any of the aforesaid institutions, and whose parent, relative, guardian, or nearest friend is unable to pay for his or her support, education and instruction in any of the aforesaid institutions, shall be entitled to the benefits intended by this act, and it is hereby made the duty of the board of county commissioners of such county to make provision, at the expense of the county, for carrying such person to the office of the superintendent of public instruction, who shall make necessary arrangements for carrying the person to any of the institutions of instruction before mentioned, at the expense of the state, payable out of the fund provided by this act.

FEES

1997. Similar section (Cutting, 2460, 2462) cited, *Russell v. Esmeralda County*, 32 Nev. 311 (107 P. 890).

1999. Similar section (Cutting, 2462) cited, *Russell v. Esmeralda County*, 32 Nev. 311 (107 P. 890).

2006. Supreme court clerk's fee.

SEC. 2. Whenever any appeal from the final judgment or any order of a district court shall be taken to the supreme court, or whenever any special proceeding by way of mandamus, certiorari, prohibition, quo warranto, habeas corpus, or otherwise, shall be brought in or to the supreme court, the party appealing or bringing such special proceeding shall at or before the filing of the transcript on such appeal or petition in such special proceeding in the supreme court pay the clerk of the supreme court the sum of twenty-five dollars lawful money of the United States, which such payment shall be in full of all fees of the clerk of the supreme court in such action or special proceeding, and shall include the five-dollar court fee provided for in section 30 of the above-entitled act. No such payment shall be required from, and no fees shall be charged by said clerk in any action brought in or to said court wherein the state or any officer or commission thereof is a party in his or its official capacity, against said officer or commission; *provided*, that in habeas corpus proceedings where the same are of a criminal or quasi-criminal nature, no fee shall be charged. *As amended, Stats. 1917, 30.*

2006. The fees of the clerk of the supreme court prescribed by Cutting, 2469 (similar to this section), allowing a fee for entering any motion, rule, or order, and a fee for filing each paper, are limited to orders and motions defined by Rev. Laws, 5362, providing that every direction of the court made or entered in writing and not included in the judgment is an order, and an application for an order is a motion, and an offer of or objection to evidence, or a ruling admitting or rejecting evidence, or the routine adjournment of the

trial is not a motion and order, and the clerk may not recover fees therefor. *State ex rel. Springmeyer v. Baker*, 35 Nev. 300, 311, 312 (126 P. 345; 129 P. 452).

2009. Similar section (Cutting, 2472) cited, *Russell v. Esmeralda County*, 32 Nev. 312 (107 P. 890).

Under similar section (Cutting, 2472) it was held that a sheriff who sells land under execution is entitled to his commission, even if it is bought in by the judgment creditor for the amount of the judgment. *Roberts v. Ingalls*, 36 Nev. 327-331 (135 P. 927, 48 L. B. A. (N.S.) 542; Ann. Cas. 1915C, 1119).

Under the same section it was held that the sheriff is not required to look to the judgment debtor personally, but rather to property held under execution, and so can make the payment of his fees a condition precedent to the execution of a certificate of sale, even though the property is bought in by the judgment creditor for the amount of the judgment. *Id.*

2011. Similar section (Cutting, 2474) cited, *Russell v. Esmeralda County*, 32 Nev. 312 (107 P. 890).

2034. Fees paid quarterly to state treasurer.

SEC. 32. The clerk of the supreme court shall, on the first Monday of each quarter, pay to the state treasurer all moneys received by him for court fees, rendering to said treasurer a brief note of the cases in which the same were received. The money so received by the treasurer shall be placed in the supreme judges' salary fund, and the same shall be used for no other purpose. *As amended, Stats. 1919, 15.*

2043. Similar section (Cutting, 2506) cited, *Russell v. Esmeralda County*, 32 Nev. 311, 312 (107 P. 890).

2044. Similar section (Cutting, 2507) cited, *Russell v. Esmeralda County*, 32 Nev. 312 (107 P. 890).

FISCAL MANAGEMENT

An Act regulating the fiscal management of counties, cities, towns, school districts, and other governmental agencies.

Approved March 22, 1917, 249

County business on cash basis.

SECTION 1. The business of every county in this state on and after the approval of this act shall be transacted upon a cash basis and in accordance with the terms of this act.

Governmental agencies of state.

SEC. 2. For the purpose of this act every county, city, town, municipality, school district or high-school district and the governing boards thereof are deemed to be governmental agencies of the State of Nevada.

Budget of public expenses must be made.

SEC. 3. The county commissioners of each county in this state shall, between the first Monday of January and the first Monday of April of each year, prepare a budget of the amount of money estimated to be necessary to pay the expenses of conducting the public business of said county for the then current year. Said budget shall be prepared in such detail as to the aggregate sums and the items thereof as shall be prescribed by the Nevada tax commission and shall in any event show the following detail:

1. Estimated aggregate assessments upon which the tax rates are based.
2. Real property.
3. Personal property.
4. Net proceeds of mines.

And shall show the estimated expenditures in detail, showing administrative expense, indigent fund, roads and bridges, interest and redemption, common schools, high schools, emergency.

The estimated receipts from all sources in the following detail: Taxation, inheritance tax, licenses, fees, poll tax, interest on county moneys, rentals and sales of county property, forest service, state's proportion of county officers' salaries, state school money.

Upon the preparation and completion of said budget the same shall be signed by the commissioners of the county approving the same and by the county clerk, and the several sums set forth in said budget under estimated expenditures shall be thereby appropriated for the several purposes therein named for the then current fiscal year. Said budget shall be forthwith filed in the office of the auditor and recorder, and a copy thereof shall then be published for two publications, one week apart, in the official newspaper of the county, if there be one, or if there be no official newspaper, then in a newspaper to be designated by the board of county commissioners.

Unlawful to contract debt.

SEC. 4. It shall be unlawful for any commissioner, or any board of county commissioners, or any officer of the county to authorize, allow, or contract for any expenditure unless the money for the payment thereof is in the treasury and specially set aside for such payment. Any county commissioner or officer violating the provisions of this section shall be removed from office in a suit to be instituted by the district attorney of the county wherein said commissioner or officer resides, upon the request of the attorney-general, or upon complaint of any interested party.

Action in cases of emergency.

SEC. 5. In case of great necessity or emergency, the board of county commissioners by unanimous vote, by resolution reciting the character and nature of such necessity or emergency, may authorize a temporary loan for the purpose of meeting such necessity or emergency; *provided, however*, that before the adoption of any such emergency resolution by the board of county commissioners they shall publish notice of their intention to act thereon in a newspaper of the county for at least two publications at least one week apart, and no vote may be taken upon such emergency resolution until fifteen days after the first publication of said notice. Upon the unanimous adoption of any emergency resolution a certified copy thereof shall be forwarded to the state board of finance, for its approval, and no such resolution shall be effective until approved by the said state board of finance, and the resolution of said state board of finance shall be recorded in the minutes of the board of county commissioners. *As amended, Stats. 1919, 406.*

May issue short-time bonds or notes.

SEC. 6. Whenever any board of county commissioners shall be authorized to make any emergency loan, as provided for in the preceding section, they may issue, as evidence thereof, negotiable paper, notes or short-time negotiable bonds. Said evidence of indebtedness shall mature not later than two and one-half years from the date of issuance, and shall bear interest at not to exceed eight per cent per annum, and be redeemable at the option of the county at any time when money is available in the emergency tax fund hereinafter provided.

Emergency tax, when.

SEC. 7. It shall be the duty of the county commissioners at the first tax levy following the creation of any emergency indebtedness to levy a tax sufficient to pay the same, which shall be designated "Emergency Tax," the

proceeds of which shall be placed in "The Emergency Fund" in the treasury of the county, and used solely for the purpose of maturing and redeeming the emergency loan for which the same is levied.

Existing indebtedness must be redeemed.

SEC. 8. The county commissioners of any county in this state which now has a floating indebtedness or any scrip outstanding shall levy a tax for the year 1917 sufficient to redeem and pay such floating indebtedness or scrip outstanding, or such board of county commissioners may immediately, upon the approval of this act, fund such floating debt into bonds, which bonds shall provide for the payment of principal and interest at the rate of not to exceed six per cent per annum and which shall be redeemed and retired in ten equal installments commencing January 1, 1918, and said board of county commissioners shall annually levy a tax sufficient to provide for the redemption of at least one-tenth of such outstanding bonded indebtedness and pay the interest thereon as herein provided.

Budgets for cities, towns and school districts.

SEC. 9. It shall be the duty of the governing board of every city, municipality, town, school district or high-school district in this state between the first Monday of January and the first Monday of April of each year to prepare a budget of the amount of money estimated to be necessary to pay the expenses of conducting the public business of such city, municipality, town, school district or high-school district for the then current year. Such budget shall be prepared in such detail as to the aggregate sums and the items thereof as shall be prescribed by the Nevada tax commission. The budget of any town or city or municipality shall in any event show the following detail:

TOWNS AND CITIES

Estimated Valuation:

Realty
Improvements
Personal
Total

REQUIREMENTS (Estimated)

Salaries of officials
Other administrative expense
Police department
Fire department
Streets and alleys
Bond interest and redemption
Miscellaneous (itemized)
Special (itemized)
Total

RECEIPTS (Estimated)

Licenses
Police fines
Other sources, excluding taxation (itemized)
Balance from taxation
Rate necessary to produce,.....
Cash on hand January 1
Balance due second half taxes, 19....

And the budget of any school district or high-school district shall in any event show the following detail:

SCHOOL DISTRICTS

Estimated Valuation:

Realty
Improvements
Personal
Total

<i>Purpose</i>	REQUIREMENTS (Estimated)	<i>Amount</i>
.....

RECEIPTS (Estimated)

Excess surplus on hand and due
Net amount required from tax levy
Cash on hand January 1
Estimated amount state apportionment				
second half 19.....
Estimated amount county apportionment				
second half 19.....
Operating surplus desired
Rate necessary to produce net requirement,			

Upon the preparation and completion of said budget it shall be signed by the governing board of such city, town, municipality, school district or high-school district, and in cities or municipalities it shall be filed with the city clerk; and if of a town, school district or high-school district, it shall be filed with the auditor and recorder of the county wherein such town, school district or high-school district is situated. A copy of said budget shall be forthwith published for two publications, one week apart, in the official newspaper of the city, town or county, if there be one, or if there be no official newspaper then in a newspaper to be designated by the governing board of such city, municipality, town, school district or high-school district.

Unlawful to contract expense not in budget.

SEC. 10. It shall be unlawful for any governing board or any member thereof or any officer of any city, town, municipality, school district or high-school district to authorize, allow or contract for any expenditure unless the money for the payment thereof has been specially set aside for such payment by the budget. Any member of any governing board or any officer violating the provisions of this section shall be removed from office in a suit to be instituted by the city attorney in the case of cities, and by the district attorney in cases of towns, school districts or high-school districts wherein such officer or member of the governing board resides, upon the request of the attorney-general or upon complaint of any interested party.

Action in cases of emergency.

SEC. 11. In case of great necessity or emergency the governing board of any city, town, school district, high-school district, or irrigation district organized according to law, by unanimous vote, by resolution reciting the character of such necessity or emergency, may authorize a temporary loan for the purpose of meeting such necessity or emergency; *provided, however*, that before the adoption of any such emergency resolution the governing board shall publish notice of their intention to act thereon in a newspaper of general circulation for at least two publications, one week apart, and no vote may be taken upon such emergency resolution until fifteen days after the first publication of said notice. Upon the unanimous adoption of any governing board of any emergency resolution, a certified copy thereof

shall be forwarded to the state board of finance, for its approval, and no such resolution shall be effective until approved by the state board of finance, and the resolution of the said state board of finance recorded in the minutes of the board. Interest accounts come within the jurisdiction of the state board of finance and may be approved or disapproved in whole or in part by said board. *As amended, Stats. 1919, 407.*

Short-time bonds or notes for emergency loans.

SEC. 12. Whenever any governing board of any city, town, school district or high-school district shall be authorized to make an emergency loan, as provided for in this act, they may issue as evidence thereof negotiable notes or short-time negotiable bonds. Said negotiable notes or bonds shall mature not later than two and one-half years from the date of issuance, and shall bear interest not to exceed eight per cent per annum and be redeemable at the option of such city, town, school district or high-school district at any time when money is available in the emergency tax fund hereinafter provided.

Tax for emergency indebtedness.

SEC. 13. It shall be the duty of every governing board of any town, city, school district or high-school district at the first tax levy following the creation of any emergency indebtedness to levy a tax sufficient to pay the same, which shall be designated "City of.....Emergency Tax," "Town of.....Emergency Tax," "School District.....Emergency Tax," ".....High-School Emergency Tax," as the case may be. The proceeds of which shall be authorized in an emergency fund in the treasury of the city or in an emergency fund in the treasury of the county, in the cases of towns, school district and high-school districts, and shall be used solely for the purpose of redeeming the emergency loan for which the same is levied.

Publication of budget county charge.

SEC. 14. The cost of publication of any budget or notice required of any town, school district or high-school district shall be a proper charge against the county in which the same is situated.

Provisions effective, when.

SEC. 14½. The provisions of this act with reference to school districts and high-school districts shall not be effective until February 1, 1919; *provided, however,* that when any special school tax be levied a budget showing the expenditures requiring such tax shall be filed with the board of county commissioners and said tax shall be subject to equalization to conform to any increase or decrease in assessed valuation. But this act shall not be construed to prevent contracts under existing laws with teachers, principals, city superintendents or other school supervisors.

SEC. 15. Repealed, Stats. 1919, 407.

Certain acts repealed.

SEC. 16. Those certain acts entitled "An act relating to the government of towns and cities, and limiting the tax rate thereof," approved March 20, 1903; "An act to authorize the issuance of interest-bearing school warrants in emergencies, to repeal all the acts or parts of acts in conflict herewith, and other matters properly connected therewith," approved March 23, 1911; and "An act relating to county government and the reduction of the rate of county taxation," approved March 13, 1903, and all amendments to any such acts, are hereby repealed.

FISH AND GAME

- 2047-2051. Repealed by implication by Stats. 1917, 459.
2052-2055. Repealed by implication by section 3, Stats. 1917, 472.
2056-2058. Repealed by implication by Stats. 1917, 459, post.
2059-2075. Repealed by implication by Stats. 1917, 459, post.
2076-2084. Repealed by implication by Stats. 1917, 403, post.
2085-2100. Repealed by implication by Stats. 1917, 459, post.
2101-2112. Repealed by implication by Stats. 1917, 459, post.
2113. Repealed by implication by Stats. 1917, 459, post.

Stats. 1913, 436, sec. 9. This section is properly enacted under the police power of the state for the preservation and protection of fish within the public waters thereof. *Ex Parte Crosby*, 38 Nev. 389-391 (149 P. 989).

A justice of the peace has jurisdiction of a prosecution for violation of this section, although the offense is committed by a white person within the limits of an Indian reservation; the state having control of the fish and game within its boundaries. *Id.*

An Act regulating private fish hatcheries in the State of Nevada, and providing penalties for violation hereof.

Approved March 24, 1917, 403

Private fish hatcheries authorized.

SECTION 1. Any person may establish a private hatchery for the artificial propagation, culture and maintenance of food fishes; and any person lawfully conducting any such private fish hatchery, and engaged in the artificial propagation, culture and maintenance of fishes, may take them in his own enclosed waters wherein the same are so cultivated and maintained, at any time and for the purposes herein mentioned and none other.

Products may be sold, how.

SEC. 2. The products of such fish hatchery, fish spawn, fry and fish may be sold at any time of the year by such hatchery, or their then vendees, after having first complied with the terms of this act and the regulations of the state fish and game commission in relation thereto.

Hatchery approved by state commission.

SEC. 3. No fish, spawn, fry, or fish from any private hatchery shall be sold under the terms of this act unless the location and plan of such hatchery be approved by the state fish and game commission, the same duly licensed as a private hatchery, and the state fish and game commission sanctions the sale of same.

Annual county license.

SEC. 4. Each private fish hatchery, before it shall be entitled to the benefits of this act, shall pay to the county treasurer of the county wherein such hatchery is located, an annual license fee of ten (\$10) dollars, and such fee shall be credited to the game and fish preservation fund of such county.

Annual state license.

SEC. 5. Every person, firm, or corporation engaged in the business of buying and selling, packing and preserving, or otherwise dealing in trout

or other food fishes, obtained from private hatcheries of this state, shall procure a license for such business from the fish and game warden of the county wherein such selling, packing, and preserving is done, and shall pay an annual license fee of \$2.50.

Invoice with sale, form of.

SEC. 6. When the proprietor of any licensed fish hatchery shall sell or dispose of any fish as herein provided, he shall at the same time deliver to the purchaser or donee or attach thereto an invoice signed by the proprietor or his agent, stating the number of his license, and the name of such hatchery, the date of disposition, the kind, and as near as practicable, the weight and number of such fish, the name and address of the purchaser, consignee, or donee. Such invoice shall authorize transportation and use for six days after its date, and shall be substantially in the following form:

STATE OF NEVADA—DEPARTMENT OF FISH COMMISSION
Private Hatchery Invoice

Name of hatchery,.....
 Number of license,.....Date....., 191.....
 Kind and number of fish,.....
 Weight of same,.....pounds.
 Name of consignee,.....
 Address of consignee,.....

This authorizes transportation within this state, possession, and sale for six days after date, of attached-to article., Proprietor.

By....., Agent.

Such proprietor or his agent shall at the same time mail, postpaid, or otherwise deliver a duplicate of such invoice to the county fish and game warden of the county in which such hatchery is located.

Invoice attached to shipment.

SEC. 7. When any such fish for which an invoice is required is to be shipped by rail, express or other carrier, public or private, the invoice shall be securely attached thereto or to the package containing the same, in plain sight, and the same may then be lawfully carried and delivered within this state to the consignee named in such invoice. If such fish is held, exposed or offered for sale, or sold by the consignee, or kept in any storage, hotel, restaurant, cafe or boarding-house, such invoice shall be kept attached thereto as aforesaid until the same shall have been prepared for consumption. In case of a sale or disposal of a part of such fish, the vender shall at the time make a copy of such invoice and indorse thereon the date of sale, the number and kind of fishes disposed of, and the name of the purchaser and sign and deliver the same to the purchaser, or donee, who shall keep it attached as aforesaid until the fish is prepared for consumption, and the same shall have force and effect as the original invoice.

Wilful omission a violation.

SEC. 8. Any wilful misstatement in, or any omission of a substantial requirement from, any invoice or copy thereof shall render the same void, and shall be deemed a violation of this act, and the possession of such fish shall be unlawful, and the possession of any fish without such invoice or a copy thereof, attached thereto, when so as above required, shall be unlawful. The proprietor of every private hatchery licensed under the preceding section shall, whenever required by the state fish and game commission, make

and send to the commission a report showing as near as practicable the kind and number of the fish added and disposed of during the year preceding, and on hand at the date of the report.

Penalties.

SEC. 9. Every person or persons, firm, company, or association, or the agents thereof, violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred (\$100) dollars, nor more than two hundred and fifty (\$250) dollars, or by imprisonment in the county jail not exceeding one hundred days, or by both such fine and imprisonment.

An Act providing for the establishment of private breeding grounds for the propagation, culture, and maintenance of fur-bearing and food animals and game fowl, for their regulation and licensing, and for the sale, shipment, transportation, and disposition of such animals and fowl raised and propagated therein or thereby, and prescribing a penalty for the violation of the provisions thereof.

Approved March 25, 1915, 363

Authorizing private breeding grounds.

SECTION 1. Any person may establish a private breeding grounds for the propagation, culture, and maintenance of any fur-bearing or food animal, or any game fowl, and any person lawfully conducting any such private breeding grounds and engaged in the propagation, culture, and maintenance of such animals or fowl may take them in his own enclosed grounds wherein the same are so cultivated and maintained, at any time, and for the purpose herein mentioned and none other.

Products may be sold.

SEC. 2. The products of such breeding grounds may be sold at any time of the year by such breeders or their then vendees, after having first complied with the terms of this act.

County license.

SEC. 3. The owner or proprietor of any private breeding grounds, before he shall be entitled to the benefits of this act, shall pay to the county treasurer of the county wherein such breeding grounds is located an annual license fee of ten dollars (\$10), and such fee shall be credited to the game and fish preservation fund of such county. The application for this license shall contain the location and plan of such breeding grounds.

Invoice with all sales.

SEC. 4. When the proprietor of any licensed breeding grounds shall sell or dispose of any animals or fowl as herein provided, he shall at the same time deliver to the purchaser or donee or attach thereto an invoice signed by the proprietor or his agent, stating the number of his license, and the name of such breeding grounds, the date of disposition, the kind and number of such animals or fowl, the name and address of the purchaser, consignee, or donee. Such invoice shall authorize transportation and use after this date. Such proprietor or his agent shall at the same time mail, postpaid, or otherwise deliver, a duplicate of such invoice to the county game warden of the county in which such breeding grounds are located; *provided*, that no invoice shall be required in case of animals or fowl lawfully taken or killed in such private breeding grounds during the open season therefor, and within the quantity provided by law while in the possession of the person killing the same, during the open season and for five days thereafter.

Invoice to be in plain view.

SEC. 5. When any such animals or fowl for which an invoice is required to be shipped by rail, express, or other carrier, public or private, the invoice shall be securely attached thereto, or to the package containing the same, in plain sight, and the same may then be lawfully carried and delivered within this state to the consignee named in such invoice. If such animals or fowl are held, exposed, or offered for sale, or sold by the consignee, or kept in any hotel, restaurant, cafe, or boarding-house, such invoice shall be kept attached thereto as aforesaid until the same shall have been prepared for consumption, or in case of furs, until they have been made into a manufactured article. In case of a sale or disposal of a part of such animals or fowl, the vendor shall at the same time make a copy of such invoice and indorse thereon the date of sale, the number and kind of animals or fowl disposed of, and the name of the purchaser, and sign and deliver the same to the purchaser, or donee, who shall keep it attached as aforesaid until the animals or fowl are prepared for consumption, or in case of furs, made into a manufactured article, and the same shall have the same force and effect as the original invoice.

Misstatement a violation.

SEC. 6. Any wilful misstatement, or any omission of a substantial requirement from any invoice or copy thereof, shall render the same void and be deemed a violation of this act, and the possession of such animals or fowl shall be unlawful, and the possession of any such animals or fowl without such invoice or a copy thereof, attached thereto, when so as above required, shall be unlawful. The proprietor of every private breeding grounds, licensed under the preceding sections, shall, whenever required by the county game warden, make and send to the county game warden a report showing, as near as practicable, the kind and number of the animals or fowl added and disposed of during the year preceding and on hand at the date of the invoice.

No bounty on animals.

SEC. 7. No person shall be allowed to collect a bounty on any noxious animal which he may maintain under the provisions of this act.

Penalty for violation.

SEC. 8. Any person or persons, or the agent of any corporation or company, violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars (\$100), nor more than two hundred dollars (\$200), or by imprisonment in the county jail not exceeding one hundred days, or by both such fine and imprisonment.

Beaver excepted.

SEC. 9. Nothing in this act shall be construed so as to permit the trapping, killing or offering for sale of any beaver or the furs therefrom.

An Act to provide for the protection and preservation of fish and game, providing penalties for the violation thereof, and repealing all acts or parts of acts in conflict herewith.

Approved March 27, 1917, 459

State divided into districts.

SECTION 1. For the purposes specified in this act, the State of Nevada is divided into separate and distinct districts for the protection of fish in waters of said districts.

District No. 1.

SEC. 2. District No. 1 shall consist of all the waters of the Truckee River lying west of the point commonly known and designated as the United States government reclamation dam in the vicinity of Derby, and extending to the boundary line of the State of Nevada and the State of California.

District No. 2.

SEC. 3. District No. 2 shall consist of the waters of the Truckee River and the waters to which it is tributary lying east of the point commonly known and designated as the United States reclamation dam in the vicinity of Derby.

District No. 3.

SEC. 4. District No. 3 shall consist of all the waters of Lake Tahoe in the State of Nevada and the tributaries thereto.

District No. 4.

SEC. 5. District No. 4 shall consist of all the waters of Pyramid Lake.

District No. 5.

SEC. 6. District No. 5 shall consist of all the mountain streams, and all the lakes, rivers, and streams not already designated.

Closed season in district No. 1.

SEC. 7. It shall be unlawful for any person, or persons, firm, company, or corporation to take, catch or kill, or attempt to take, catch or kill, any river trout, lake trout, or brook trout, white-fish, or land-locked salmon, catfish, or large-mouthed or small-mouthed black bass in or from any of the waters of the Truckee River district No. 1 between the first day of October of each year, and the fifteenth day of April of the following year, both dates being included.

Closed season in district No. 2.

SEC. 8. It shall be unlawful for any person or persons, firm, company or corporation to take, catch, kill, or attempt to take, catch, or kill any river trout, lake trout, or brook trout, white-fish, land-locked salmon, royal chinook salmon, large-mouthed or small-mouthed black bass in or from any of the waters of the Truckee River district No. 2 between the sixteenth day of February of each year and the thirty-first day of March of the same year, both dates included.

Closed season in district No. 3.

SEC. 9. It shall be unlawful for any person or persons, firm, company or corporation to take, catch, kill, or to attempt to take, catch or kill, any river trout, or brook trout, white-fish, land-locked salmon, royal chinook salmon, large-mouthed or small-mouthed black bass, or rainbow trout, lock-laven, or any other trout in or from the waters described and designated in district No. 3 between the dates of the thirty-first day of October and the thirty-first day of May of the following year, both dates included.

Closed season in district No. 4.

SEC. 10. It shall be unlawful for any person or persons, firm, company or corporation to take, catch, kill, or attempt to take, catch or kill, any river trout, lake trout or brook trout, white-fish, land-locked salmon, royal chinook salmon, large-mouthed or small-mouthed black bass, in or from any of the waters of Pyramid Lake, known as all the waters of district No. 4, between the dates of the sixteenth day of February and the thirtieth day of April of the same year, both dates included.

Closed season in district No. 5.

SEC. 11. It shall be unlawful for any person or persons, firm, company or corporation to take, catch, kill, or attempt to take, catch or kill any river trout, lake trout, or brook trout, white-fish, land-locked salmon, royal chinook salmon, large-mouthed or small-mouthed black bass, in or from the waters of district No. 5 between the dates of the first day of October of each year and the thirtieth day of April of the following year, both dates included.

Unlawful to pollute public waters.

SEC. 12. Every person who places or allows to pass, or who places where it can pass or fall into or upon any of the waters of this state at any time, any lime, gas, tar, cocculus indicus, slag, acids, or other chemical, sawdust, shavings, slabs, edgings, mill, or factory refuse, or any substance deleterious to fish shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than two hundred and fifty nor more than five hundred dollars, or by imprisonment in the county jail in the county in which the conviction shall be had, for not less than one hundred and twenty-five days nor more than two hundred and fifty days; *provided*, that the provisions of this section shall not apply to mills or works for the reduction of ores, nor against the owners or operators of such mills or works so far as concerns the owners or operators of such mills or works.

Fish-ways and ladders to be maintained.

SEC. 13. All persons, firms, companies, associations, or corporations, who have erected, or who may hereafter erect, any dams, water weirs, or other obstructions to the free passage of fish in the rivers, streams, lakes, or other waters of the State of Nevada, shall construct and keep in repair fish-ways or fish-ladders at all such dams, water weirs, or other obstructions, so that at all seasons of the year, fish may ascend above such dams, water weirs, or other obstructions to deposit their spawn.

Destruction of same prohibited.

SEC. 14. Any person or persons who shall at any time, wilfully or knowingly destroy, injure, or obstruct any fish-way or fish-ladder, or any person or persons who shall at any time take or catch any fish in any manner within one hundred feet of any dam containing a fish-way or fish-ladder, which is required by law, shall be deemed guilty of a misdemeanor.

Screens to be maintained.

SEC. 15. Any person, or community of persons, company, or corporation owning in whole or in part any canal, ditch, or any artificial watercourse, taking or receiving its waters from any river, creek, or lake, in which fish have been placed, or may exist, shall within 180 days after the approval of this act, place or cause to be placed, and shall maintain at the intake or inlet, of such canal, ditch, or watercourse, a reasonable grating, screen, or other device either stationary or operated mechanically, of such construction, fineness, strength, and quality, as shall prevent any fish from entering such canal, ditch, or watercourse.

Unlawful to ship fish out of the state.

SEC. 16. It shall be unlawful for any person or persons, company, association, or corporation to at any time, transport or offer for transportation to any place outside of this state any lake, river, or brook trout or land-locked salmon, white-fish, black bass, or any other fish caught within the streams or lakes or rivers of this state.

Unlawful to sell fish during closed season.

SEC. 17. It shall be unlawful for any person or persons, firm, company or corporation in the State of Nevada to buy, sell, or offer or expose for sale or to have in his, her, their or its possession, any river trout, lake trout, or brook trout, salmon, white-fish, or large-mouthed or small-mouthed black bass, taken or caught from any waters of this state within the closed season specified in this act.

Unlawful to take fish under certain length.

SEC. 18. It shall be unlawful for any person or persons, firm, company or corporation to kill, or to retain in his, her, their, or its possession any lake trout, river trout, land-locked salmon, or royal chinook salmon, taken from the waters of this state less than seven inches in length; or any large-mouthed or small-mouthed black bass, Sacramento perch less than eight inches in length, or any red-spotted eastern brook trout less than six inches in length, saving and excepting fish produced in state or private fish hatcheries and then only in the manner and under the conditions in such cases made and provided by law.

Certain regulations concerning carriers.

SEC. 19. It shall be unlawful for any person or persons, railroad, railway company or corporation, express company, stage line, transportation company, or any common carrier in the State of Nevada to accept or to receive for shipment or for transportation from any one person or in the name of any one firm, company, or association, in any one calendar day, more than ten pounds of trout, land-locked salmon, or royal chinook salmon, or of large-mouthed or small-mouthed black bass, taken or caught in or from any of the waters of the State of Nevada; *provided*, that nothing in this section shall be so construed as to prevent the shipment, or receipt, or acceptance, of ten trout on one calendar day from any single consignor, and it shall be unlawful for any person or persons, firm, company, association, or corporation, transportation company, or common carrier to offer or present or to receive or accept for shipment, carriage or transportation any box, bundle, package, basket, or other container whatsoever in which are enclosed any of the fishes herein specified, unless the box, bundle, basket, or other container aforesaid shall be so wrapped, tied, or constructed that it shall be easily opened for inspection or examination, and unless it shall bear a conspicuous label, easily read, which shall state the contents thereof, together with the name and address of the consignor and consignee; and false statement on the aforesaid label either as to the contents enclosed or as to the true name or address of the consignor thereof or of the consignee shall be construed as a violation of this act.

Shipment of spawn prohibited—Exception.

SEC. 20. It shall be unlawful for any person or persons, railroad, railroad company, or corporation, express company, stage line, transportation company or any common carrier in the State of Nevada to accept or offer for transportation out of the state, any spawn taken within the state, unless with the expressed consent of the Nevada fish and game commission.

Catch limited.

SEC. 21. It shall be unlawful for any person or persons, firm, company, or corporation to take, catch, or kill from any of the waters of the State of Nevada or to have in his, her, their, or its possession on any one calendar day more than ten pounds of trout, or of land-locked salmon or royal chinook salmon, or large-mouthed or small-mouthed black bass, or Sacramento perch, or white-fish caught in the waters of this state; *provided*,

that nothing in this act shall be so interpreted as to prevent or to prohibit the taking of the trout or salmon, or other fish specified in this act.

Fishing prohibited near dam.

SEC. 22. It shall be unlawful for any person or persons, firm, company, or association in the State of Nevada at any time to take, catch, or kill any lake trout, river trout, brook trout, land-locked salmon, royal chinook salmon, large-mouthed or small-mouthed black bass, Sacramento perch, or any other species of fish whatever, within a distance of one hundred feet above or below any dam in this state containing a fish-way or fish-ladder.

Fishing prohibited within one mile below any U. S. dam.

SEC. 23. It shall be unlawful for any person, or persons, firm, company or corporation in the State of Nevada to take, catch, or kill or to attempt to take, catch or kill any lake trout, river trout, brook trout, land-locked salmon, royal chinook salmon, white-fish, large-mouthed or small-mouthed black bass, Sacramento perch, or any other fish of any species whatever, at any time or season whatever within a distance of one mile below any dam of the United States reclamation service containing a fish-way or fish-ladder, and lying within the State of Nevada.

Night fishing prohibited.

SEC. 24. It shall be unlawful for any person, or persons, firm, company or corporation in the State of Nevada to take, catch or kill or attempt to take, catch or kill any lake trout, river trout, or brook trout, land-locked salmon, royal chinook salmon, large-mouthed or small-mouthed black bass, Sacramento perch, or any other fish of any species whatever from any of the waters of the State of Nevada, on any calendar day after two hours after sunset, and on any calendar day before one hour before sunrise.

Officers authorized to seize fish.

SEC. 25. The fish and game commissioners of the State of Nevada, the members of the Nevada state police, and every fish or game warden throughout the state, and every sheriff and constable in his respective county is and are hereby authorized and required to enforce this act and to seize any game or fish taken or held in possession in violation of this act, and he or they shall have full power and authority and it shall be the duty of every such officer with or without a warrant, to open, enter or examine all camps, wagons, cars, automobiles, stages, tents, packs, warehouses, stores, outhouses, stables, barns, and other places, boxes, barrels, baskets and packages where he has reason to believe any fish taken or held in violation of any of the provisions of this act is or are to be found, and to seize the same; *provided*, that a dwelling-house actually occupied can be entered for examination only in pursuance of a warrant.

Officers may deputize.

SEC. 26. In case Indians or any other persons in the State of Nevada shall engage in the killing of trout or other fishes in violation of any of the provisions of this act, shall be in such numbers as to be beyond the reasonable power of any fish or game warden or the state fish and game commission to control, or in case of forcible resistance to the enforcement thereof, it shall be the duty of the sheriff or sheriffs of the county or counties where such violation exists, upon the demand of such commissioners or any warden to aid him in the enforcement of this act, and to call to his assistance at once a sufficient number of persons to enforce the same promptly and effectually; or if by him deemed necessary, said commissioners or said warden may call such assistance without the intervention of the sheriff. The failure without good cause of any person or persons to respond and to render such assistance shall be deemed a violation of this act.

Various penalties named.

SEC. 27. Any person or persons, firm, company or corporation, association, or common carrier in this state, who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor. It shall be no defense in a prosecution for violation of any of the provisions of this act that the trout or other fish in question were taken or killed outside the State of Nevada. Possession shall be prima facie evidence that the fish were taken from within the state. Nor shall it be any defense in any prosecution for violation of any of the provisions of this act that the trout or fish were taken or killed by one other than he in whose possession said trout or other fish were found. The act of passing a line into or on any of the waters of the State of Nevada, as though in the act of fishing, shall be in itself sufficient evidence of any attempt to take or catch fish within the meaning of this act. The presence in or on the body in flank, back, or belly of any of the fishes herein specified of deep incised wounds or cuts such as are made by spears, grab-hooks, trout-hooks, or snag-hooks, shall be construed as in itself sufficient evidence that the said fish were taken in violation of the provisions of this act.

Not to apply to private ponds.

SEC. 28. Nothing in this act shall be construed as to prohibit the taking of trout or other fish, by the rightful owners thereof or by their agents in any manner, at any season whatever, from the waters of private ponds by them constructed or maintained for the purpose of raising trout or other fishes; nor to prohibit the sale of trout or other fishes or of their fry or ova from private hatcheries lying wholly or in part within the State of Nevada.

Not to prohibit taking for scientific purposes.

SEC. 29. Nothing in this act shall be so construed as to hinder or to prevent or prohibit the taking of trout or of other fishes or of their fry, eggs or ova, at any time, in any manner or by any means or in any suitable place or location by the Nevada fish and game commission or by their agents or by any one whom they may authorize, for the purposes of breeding or propagation, or of scientific study or investigation.

Fishing with hook and line only—Explosives prohibited.

SEC. 30. It shall be unlawful for any person or persons, firm, company or corporation to take, catch or kill, or to attempt to take, catch or kill, in or from any stream, lake or river, or any waters of the State of Nevada, any trout, salmon or white-fish, bass, perch, catfish or any other fish of any species whatever with any seine, net, spear, set-line, set-hooks, grab-hooks, trot-line, or snag-line, or in any manner known as snagging, or with any weir-fence, trap, giant powder or any other explosive, or explosive compound, or with or by means of any bait constituted or prepared in whole or in part of or from the spawn, eggs, or ova of trout, salmon or of any other species of fish whatever except with hook and line attached to a rod held in the hands and in the manner known as angling; that is, with baited hook, fly-hook, spoon-hook, or other angler's lure.

General penalties.

SEC. 31. Any person violating any of the provisions of this act, or any section thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than fifty dollars nor more than two hundred and fifty dollars; or by imprisonment in the county jail for a term of not less than twenty-five days nor more than one hundred and twenty-five days, or by both such fine and imprisonment.

Commissioners may extend closed season.

SEC. 32. The board of county commissioners of the several counties of this state, each within its own county, are hereby authorized to extend by special ordinance the closed season for fishing in any streams or parts of streams, lakes, or waters within their county which are now or hereafter shall have been stocked with food fish by the state or its fish commissioners, and authorized jointly to state a period as may, in their opinion, be required for the protection of the fish in said streams and waters to the end that the supply of fish for food may be permanently increased; *provided, however*, that before any said special ordinance so passed by any board of county commissioners shall be effective, it shall have been published by order of the board of county commissioners for at least once each week for four consecutive weeks in a newspaper published and of general circulation in the county where there are any streams, parts of streams, lakes, or waters in or from which the open season for taking or catching fish is to be restricted, and shall state the period over which the closed season is to extend, giving the names of the streams, parts of streams, lakes or waters, and copies of said ordinance shall have been posted in at least four conspicuous places along any streams, parts of streams, lakes, or waters in or from which the open season for taking or catching fish is to be restricted.

Penalties for violation of ordinance.

SEC. 33. Any person who shall violate the provisions of said order of the board of county commissioners shall be guilty of a misdemeanor, and shall be fined not less than fifty (\$50) dollars, nor more than two hundred and fifty (\$250) dollars, or imprisoned in the county jail not less than twenty-five (25) days, nor more than one hundred and twenty-five (125) days, or by both such fine and imprisonment, in the discretion of the court.

Certain birds protected at all times.

SEC. 34. It shall be unlawful for any person or persons, firm, company, corporation, or association, to kill, catch, destroy, wound, snare, trap, injure, or pursue with attempt to catch, capture, injure, or destroy any bluebird, thrush, mocking-bird, oriole, humming-bird, or swan, robin, meadow-lark, or any insectivorous, plume, or song bird within this state.

Pheasants.

SEC. 35. It shall be unlawful for any person or persons, firm, company, corporation, or association to kill, destroy, wound, trap, net, weir, injure, or pursue with the attempt to kill, capture, injure, or destroy any pheasant within this state before the first day of September, 1920.

Grouse and mountain quail.

SEC. 36. It shall be unlawful for any person or persons, firm, company, corporation, or association, within this state, to kill, catch, trap, net, pound, weir, wound, or pursue, with attempt to catch, capture, injure, or destroy any grouse or mountain quail before the first day of September, 1922.

Sage-hens and sage-cocks.

SEC. 36½. It shall be unlawful for any person or persons, firm, company, corporation, or association, within this state, to kill, catch, trap, net, pound, weir, wound, or pursue with intent to catch, capture, injure or destroy any sage-hen or sage-cock before the fifteenth day of July or after the first day of September of each and every year.

Game birds.

SEC. 37. It shall be unlawful for any person or persons, firm, company, corporation, or association, at any time from January 16 and before

October 1 of each and every year, to kill, catch, net, cage, pound, weir, trap, or pursue with attempt to catch, capture, injure or destroy any wild duck, sandhill crane, plover, curlew, snipe, woodcock, geese, brants, prairie chicken within this state; *provided, however*, that the open season on the migratory game birds named in this section shall always automatically change so as to conform to the "Regulations for the Protection of Migratory Birds," as they shall hereafter be prescribed by the U. S. Department of Agriculture, Bureau of Biological Survey.

Doves and valley quail.

SEC. 38. The board of county commissioners of the several counties, with the approval of the state fish and game warden, may declare the open or closed season on valley quail and doves, and may regulate the number of same to be killed in any one day.

Nests and eggs protected.

SEC. 39. It shall be unlawful at any and all times of the year for any person or persons, firm, company, corporation, or association, to destroy, injure, or remove the nest or eggs of any of the birds mentioned in this act.

Size of shotgun.

SEC. 40. It shall be unlawful in this state for any person or persons to use at any time a shotgun of a larger gage than that commonly known and designated as a number ten gage.

Mountain sheep, elk and antelope.

SEC. 41. It shall be unlawful at all times to kill, injure, or maim any mountain sheep or goats, elk, or antelope until January 1, 1930.

Limit.

SEC. 42. It shall be unlawful for any person or persons, firm, company, corporation or associations within the state to kill, catch, trap, net, pound, weir, wound or pursue with the attempt to catch, capture, injure or destroy any deer, between the fifteenth day of November and the fifteenth day of October of each succeeding year; and during the time of the open season it shall be unlawful for any person or persons, firm, company, corporation or association within this state to kill, catch, trap, wound, or pursue with an intent to catch, trap, injure or destroy any number of deer exceeding one deer for the open season of any one year.

Fawn always protected.

SEC. 43. It shall be unlawful to kill, catch, trap, wound or pursue with attempt to catch, injure, kill or destroy any fawn at any time.

Unlawful to have in possession.

SEC. 44. It shall be unlawful for any person or persons, firm, company or association to have in their possession any deer or antelope during any time of the year other than during that time herein designated as the open season.

Certain hunting prohibited at night.

SEC. 45. It is hereby made unlawful for any person at any time to kill, catch, trap, net, impound, weir, wound, or pursue with intent to catch, capture, injure, or destroy any wild ducks or wild geese or mountain quail or valley quail during the hours included between sunset and sunrise, the same to be considered according to government time reports.

Use of hounds prohibited.

SEC. 46. It shall be unlawful for any person or persons, firm, company, corporation, or association, at any time of the year to hunt, chase, pursue,

catch, or kill, any deer, antelope, caribou, elk, mountain sheep, or mountain goat, with or by the use or aid of any hound or hounds.

Barter or sale of game unlawful—Takes limited.

SEC. 47. It is hereby made unlawful for any person to sell, or offer for sale, or to attempt to sell, or barter any wild ducks, wild geese, prairie chicken, mountain quail, sage-hen, grouse, valley quail, plover, or snipe. It shall be unlawful for any person or persons to purchase such game for the purpose of barter or sale, and it shall also be unlawful for any person to kill or have in his possession a greater number than fifteen ducks, ten sage-hen or sage-cock, fifteen snipe in one day; five geese or five brants in any one day.

Transportation by common carriers prohibited.

SEC. 48. Every railroad company, express company, transportation company, or any other common carrier, their officers, agents and servants, and every other person who shall transport, carry, or take out of this state, or who shall receive for the purpose of transporting or carrying from this state any deer, buck, doe, or fawn, or any mountain sheep, or antelope, or any quail, sage chicken, prairie chicken, grouse, wild duck, or goose, or any other bird or animal mentioned in this act, shall be guilty of a misdemeanor.

Penalties named.

SEC. 49. Any person or persons, company, corporation, or association, or common carrier violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than \$50 nor more than \$500, or imprisonment in the county jail in the county in which said conviction is had for any term not exceeding six months, or by both such fine and imprisonment. It shall be no defense in the prosecution for the violation of any of the provisions of this act, that the animals or birds were taken or killed outside the State of Nevada; nor shall it be any defense in the prosecution of the violation of any of the provisions of this act that the animals or birds were taken or killed by one other than he in whose possession said animals or birds were found; for possession shall be prima facie evidence that the game was taken within the confines of the state.

Commissioners may extend closed season—Open season never lengthened.

SEC. 50. Should it be deemed advisable by a board of county commissioners for any county within this state to lengthen or extend the time of the close season for any specie of game mentioned in this act, the said board of county commissioners, acting for their respective county, may, after first making application for and receiving the written authority of the state fish and game warden by special ordinance extend such close season; *provided, however*, that in no event shall the county commissioners or any organization of men within this state extend the open season or shorten the close season for any specie of game whatsoever. Nothing in this act shall be so construed as to prohibit any person (upon written permit of the governor of the state) from taking or killing any bird or fowl, or collecting the nest and eggs of the same for strictly scientific purposes; nor be so construed as to prohibit any person at any time from trapping any bird or fowl in any county in this state, upon a written permit of the game warden or chairman of the board of county commissioners of such county, for the purpose of shipping such bird or fowl into another county in this state for the purposes of propagation, the number of birds or fowls to be so shipped to be limited by said game warden or chairman.

Beaver.

SEC. 51. It shall be unlawful for any person or persons, firm, company, corporation or association to catch, kill, destroy, trap, net, weir or cage any beaver in this state on or before the first day of January, 1920.

Common carriers prohibited from exporting.

SEC. 52. Every railroad company, express company, transportation company, or other common carrier, their officers, agents and servants, and every other person who shall transport, carry or take out of this state, or who shall receive for the purpose of transportation from the state any deer, buck, doe or fawn, or any mountain sheep, or antelope, wild duck or goose, except for purposes of propagation, shall be guilty of a misdemeanor. Any person found guilty of a violation of any of the provisions of this section shall be fined in a sum of not less than twenty (\$20) dollars nor more than five hundred (\$500) dollars, or be imprisoned in the county jail not less than twenty-five days nor more than one hundred days, or by both such fine and imprisonment.

Barter or sale of game birds prohibited.

SEC. 53. Every person who buys, sells or offers to sell or exposes for sale, barter or trade, any wild duck, wild goose, partridge, quail, grouse, pheasant, sage-hen, rail, ibis, plover or any variety of snipe or shore bird, meadow-lark or robin shall be guilty of a misdemeanor.

Sale of certain meat prohibited.

SEC. 54. Every person who sells or offers for sale or trade or barter any deer meat or antelope meat is guilty of a misdemeanor.

General penalties.

SEC. 55. Every person violating any of the provisions of this act for which violation a penalty is not otherwise provided in this act shall, upon conviction thereof, be punished by a fine of not less than fifty (\$50) dollars nor more than two hundred and fifty (\$250) dollars, or by imprisonment in the county jail for a term of not less than twenty-five days nor more than one hundred and twenty-five days, or by both such fine and imprisonment.

American eagle.

SEC. 56. It shall be unlawful for any person or persons, firm, company, corporation or association to kill, destroy, wound, trap, injure, keep in captivity, or in any other manner to catch or capture, or to pursue with such intent the bird known as the American eagle, or to take, injure or destroy the nest or eggs of said before-mentioned bird. Any person or persons, firm, company, corporation or association violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum not less than twenty-five dollars nor more than two hundred dollars, or imprisonment in the county jail for any term not exceeding six months, or both.

Destruction of eggs.

SEC. 57. Every person who shall kill or destroy the eggs of any wild canary, wren, linnet, thrush, robin, bluebird, oriole, humming-bird, meadow-lark, snowbird, or other song, plume or insectivorous bird is guilty of a misdemeanor. This section shall not apply to English sparrows, the killing of which is authorized.

Each section of act independent and separate.

SEC. 58. If in connection with any prosecution for violation of any of

the provisions of this act, or in any other way any section of this act shall be hereafter adjudged unconstitutional or inoperative, or invalid, and of no force and effect, then the unconstitutionality, invalidity, or inefficiency of said section shall not extend to any other section or sections of this act, which are not so adjudged unconstitutional, inoperative, invalid, or inefficient, nor to the constitutional validity or the force and effect of the entire act.

Fishing licenses.

SEC. 59. Every person in the State of Nevada who hunts or kills any of the wild birds or animals, or who takes or catches any of the fishes that are protected by the laws of this state without first procuring a license therefor, as provided in this act, is guilty of a misdemeanor.

Licenses, where procured.

SEC. 60. Licenses granting the privilege to hunt, pursue or kill wild birds or animals, or to take or catch fish during the open season as fixed by law shall be issued and delivered upon application, by the county clerk of any of the counties of this state, or by the state fish and game warden, or the deputy state or county fish and game warden of any of the counties of the state, which licenses shall have written thereon the words:

Expires December 31, 191....

State of Nevada, County of.....

ANGLER'S LICENSE—HUNTING LICENSE

Name

Age.....Height.....

Eyes, color.....Hair, color.....

Residence

The holder of this license hereby agrees to exhibit any game or fish in my possession to any regularly appointed deputy fish and game commissioner upon demand.

Owner's signature.....

No..... Date issued..... Not transferable.

Rates for licenses.

SEC. 61. The licenses shall be issued as follows:

First—To any citizen of the United States, who is a bona-fide resident of the State of Nevada, upon the payment of one (\$1) dollar for a fishing license and one (\$1) dollar for a hunting license.

Second—To any citizen of the United States, not a bona-fide resident, upon the payment of five (\$5) dollars for a fishing license, or five (\$5) dollars for a hunting license; *provided*, that a fishing or hunting license may be issued to a citizen of any state at and for the sum charged citizens of this state, if the laws of the state of the applicant therefor extend the same privilege to citizens of this state.

Third—To any person not a citizen of the United States, upon the payment of fifteen (\$15) dollars for a fishing license. In no case shall a hunting license be issued to any such person not a citizen of the United States.

Fourth—A license of fifteen (\$15) dollars shall be charged to any one engaged in market fishing. *As amended, Stats. 1919, 297.*

Requirements for license.

SEC. 62. Every person applying for and procuring a license, as herein provided, shall give to the county clerk his name and resident address, which information shall be by the clerk or board entered in a book kept

for that purpose, and provided by said board of county commissioners, together with a statement of the date of issuance, the number of licenses issued to such person and description of such person, by age, height, race, and color of the eyes and hair. The county clerk shall give a duplicate of the above descriptive matter to the state game and fish warden.

Licenses for one year only.

SEC. 63. All licenses issued as herein provided shall be valid, and shall authorize the person to whom issued to hunt, pursue, and kill game birds and animals and to take or catch fish during the open season fixed therefor by law, on and from the day of paying the license until the date of expiration printed thereon. No license shall be given for a period longer than one year.

Apportionment of license money.

SEC. 64. All money collected for licenses as provided herein, shall be apportioned as follows: Two-thirds, or sixty-six and two-thirds per cent, of the money collected, shall be paid into the county treasury of the county where the license is collected, to be applied to the credit of the game and fish preservation fund, which fund is hereby created, and the money of said fund shall be applied to the payment of the expenses incurred in the prosecution of offenders, and for the revenue to pay fish and game wardens and deputies, when necessary to hire deputy fish and game warden, or wardens, and for revenue to pay for the importation and propagation of wild birds; one-third, or thirty-three and one-third per cent, of the money collected, shall be paid into the state treasury to be applied to the credit of the state fish and game warden fund, which fund is hereby created, and the money of said fund shall be applied for the revenue of the salary to be paid to the state fish and game warden and for his necessary expenses.

Limit on number of licenses.

SEC. 65. Not more than two licenses shall be issued to any one person for the same fiscal year, except upon an affidavit by the applicant that either one issued has been lost or destroyed, and no licenses as herein provided shall be transferable or used by any other person than the one to whom they were issued.

License shown to officer.

SEC. 66. Every person having licenses as provided herein, who while hunting or fishing refuses to exhibit such licenses upon the demand of any officer authorized to enforce the fish and game laws of the state, or any other peace officer of the state, shall be guilty of a misdemeanor, and every person lawfully having said licenses, who transfers or disposes of the same to another person to be used as a hunting or fishing license, shall forfeit the same.

County appropriations ordered.

SEC. 67. There is hereby appropriated, out of any moneys in the county treasury of each county of the state not otherwise appropriated, the sum of seventy-five dollars for the purpose of carrying out the provisions of this act, to be used by the board of county commissioners for the printing and binding of suitable books and blanks required herein, and for the purchase of licenses. The auditor of each county of the state is hereby directed to draw his warrant for said amount in favor of said board of county commissioners at such times and in such amounts as may be needed from time to time, and the treasurer of each county of the state is hereby directed to pay the same.

Act not to apply to certain persons.

SEC. 68. The provisions of this act shall not apply to any person who, on his own land, during the open season, hunts, pursues or kills any of the wild birds or animals, or takes or catches any of the fish protected by the laws of this state, nor to girls or to boys under fourteen years of age.

Nonresidents.

SEC. 69. The licenses herein provided for shall be procured from any county of the state, and may be used in any county in the State of Nevada. Nonresidents of the state may procure licenses in any county.

See "An act to provide a board of fish and game commissioners, defining their duties and powers; providing for a state fish and game warden and deputies," etc. Stats. 1917, 472, post.

FRANCHISES

2131. How granted—Notice.

SEC. 3. An applicant shall also file with such application, and as a part thereof, if such franchise, right, or privilege is to be exercised within any unincorporated town or city in such county, a petition, in writing, signed by a majority of the resident taxpayers of such unincorporated town or city. Said taxpayers must be residents and owners of real estate situated in said county, and paying taxes upon said real estate; *provided*, that if such street-railway, electric-light, heat, and power lines, gas and water mains, telegraph and telephone lines shall not pass through any unincorporated town, or city, no petition need be filed with the said application for the franchise. Upon the filing of the said application, the said board of county commissioners shall, at its next regular meeting, cause notice of said application to be given; such notice shall contain the name of the firm, association, corporation, person, or persons making the application; the nature in general terms of the franchise, right, or privilege applied for; the day when the hearing upon such application shall be had, which shall not be less than ten (10) days after the period of publication or notice herein provided for has been completed, or at the next regular meeting of the board of county commissioners, after the completion of said publication, or notice, as the case may be; notice that all persons who have any objection to the granting of said franchise, right, or privilege to file their objection, in writing, with the clerk of said board before the date of said hearing, or to appear at said meeting, and present their objections at said time. Said notice shall be published once a week for four consecutive weeks in some newspaper of general circulation, published in said county. The clerk shall also cause three copies of said notice to be posted in three public places nearest where said application shall take effect, and if more than one incorporated city or town shall be affected thereby, such notice shall be posted in three public places in each of said incorporated towns or cities; *provided, however*, that if no newspaper shall be published in said county, that notice shall be given by the posting of notices as herein provided. Proof of such notice shall be made by the clerk of the board before the hearing in said matter shall proceed, and such proof shall become a part of the record in such proceedings; *provided, however*, that before such notice shall be given, the applicant must deposit with such clerk the cost of such publication, and notice, the amount thereof to be fixed by said board of county commissioners. *As amended, Stats. 1915, 78.*

An Act granting franchises for conducting and carrying on abattoirs, packing-houses, packing-house agencies, stockyards, renderies, tallow chandleries, tanneries, wool pulleries, bone, soap, and fertilizing factories, and conducting other factories and business incident or appurtenant to the foregoing; and other matters in connection therewith.

Approved March 6, 1915, 87

To whom granted.

SECTION 1. In all cities in which, at the general election in the year A. D. 1914, there were polled for candidates for United States senator more than twenty-five hundred votes, and in which any person, firm, association, or corporation, or the heirs, assigns, or successors in interest of either of them, shall have heretofore invested not less than twenty thousand dollars, in real property, including improvements and equipment thereon, for the purpose of maintaining, conducting, and carrying on, and in which said city are now being maintained, conducted, and carried on, one or more or either of the following kind of business, to wit: Abattoirs; packing-houses; packing-house agencies; plants for the curing and smoking of meats and meat products, and for manufacturing into commercial form all by-products of said abattoirs and packing-houses; also carrying on stockyards and buildings, renderies, tallow chandleries, tanneries, wool pulleries, bone, soap, and fertilizing factories, and processing of offal, and for carrying on any other factories or business incident or appurtenant to all or either of the foregoing kinds of business, a franchise shall be and is hereby granted to each of said persons, firms, associations, or corporations, and to the heirs, successors, or assigns of either of them, to continue maintaining, conducting, and carrying on all or either of the businesses aforesaid for the period of fifty years from and after the date of enactment hereof, upon the lands and premises upon which said business or businesses were established or are being maintained, conducted, and carried on at the date hereof, and upon any premises adjacent to or in the immediate vicinity thereof, the title to which shall have been lawfully acquired and which may or shall hereafter be or become useful or advantageous in the maintaining, conducting, or carrying on of all or either of the businesses in this act enumerated; *provided, however*, that nothing in this act shall be so construed as to limit any municipality in its control and regulation or power to levy licenses or taxes upon the business or businesses herein described.

An Act providing for the granting of franchises by boards of county commissioners to persons, associations or corporations engaged in the business of supplying electric light, heat or power, within two or more counties of this state, who are desirous of extending such business into any other county or counties, and providing for increasing the term of any franchise heretofore granted to persons, associations or corporations engaged in the business of supplying electric light, heat or power within two or more counties, and prescribing the conditions for obtaining a franchise in any other county or counties, and for obtaining an extension of the term of any franchise heretofore granted and under which such persons, associations or corporations are now operating.

Approved March 26, 1919, 185

County commissioners may grant franchises.

SECTION 1. The boards of county commissioners of the different counties of this state are hereby authorized and empowered to grant, within their respective counties, to any person, association or corporation engaged in the business of supplying electric light, heat or power in two or more counties of this state, and who desires to extend such business into any

other county or counties, the franchise, right and privilege to construct, install, operate and maintain electric-light, heat and power lines, and all necessary or proper appliances used in connection therewith, or appurtenant thereto, in or over the streets, alleys, avenues, and other places in any unincorporated town or city, and along the public roads and highways of their respective counties when the applicant therefor shall comply with the terms and provisions of this act.

Extension of business.

SEC. 2. Any person, association or corporation engaged in the business of supplying electric light, heat or power within two or more counties of this state, and who desires to extend such business into any other county or counties, may obtain a franchise to construct, install, operate and maintain electric-light, heat and power lines, and all necessary or proper appliances used in connection therewith, or appurtenant thereto, in or over the streets, alleys, avenues, and other places, in any unincorporated town or city, and along the public roads and highways, in any other county or counties, by filing with the board of county commissioners of the county or counties respectively within which such franchise is to be exercised an application, in writing, setting forth: First, the name of the applicant, the counties in which the applicant is operating, and the time for which such franchise is desired, not exceeding fifty years. Second, the places where such franchise, right or privilege is to be exercised in said county, and if such franchise is to be exercised, in whole or in part, within any unincorporated town or city in said county the applicant shall also file with such application a petition, in writing, signed by a majority of the resident taxpayers of said unincorporated town or city.

Duties of commissioners.

SEC. 3. Upon receipt of said application for such franchise, the board of county commissioners of said county shall set the same for hearing at its next regular meeting thereafter, and shall cause such notice to be given of the filing of said application and of the time set for the hearing thereof as it may deem reasonable, and at said hearing objections to the granting of said franchise may be heard and considered.

Hearing of application.

SEC. 4. If upon the hearing of said application it appears to the satisfaction of the said board of county commissioners that the applicant is engaged in the business of furnishing electric light, heat or power within two or more counties of this state, and if such franchise is to be exercised, in whole or in part, within any unincorporated town or city in said county, that a majority of the resident taxpayers of said town or city have signed said petition and desire said franchise allowed, the board of county commissioners shall thereupon grant such franchise for a term not exceeding fifty years thereafter.

Construction to be begun promptly.

SEC. 5. The county commissioners shall, at the time of granting any franchise provided in section 4, require the applicant to enter an undertaking to the county, in a sum to be determined by the board of county commissioners, with a surety or sureties approved by said board, conditioned that such applicant shall commence active construction of said electric-light, heat or power lines for which such franchise is granted within six months from the date of granting the same and prosecute the construction thereof to completion with due diligence; and failing to comply with the conditions of such undertaking the applicant shall forfeit all rights to said franchise.

Percentage of profits to school fund.

SEC. 6. The grantee of any franchise secured under the provisions of this act shall, within thirty days after such franchise is granted, file with the county recorder of such county an agreement, properly executed by the grantee, to pay annually, on the first Monday of July of each year, to the county treasurer of said county, for the benefit of the school fund of said county, two per cent of the net profits made by such grantee in the operation of such electric-light, heat and power lines within said county, and no right or privilege shall be exercised under said franchise until said agreement is filed.

Poles and wires, regulated.

SEC. 7. All poles from which wires are suspended for electric-power, light or heating purposes within the boundaries of unincorporated towns or cities and over public highways shall be subject to such rules and regulations in constructing and maintaining the same as may be prescribed by the public service commission of the State of Nevada, and the persons or corporations operating such electric-light, heat or power lines shall provide a competent electrician, at the expense of said persons or corporations to cut, repair and replace wires in all cases where such cutting, repairing or replacing is made necessary by the removal of buildings or other property through the public streets or highways.

Franchises may be extended.

SEC. 8. Any person, association or corporation engaged in the business of supplying electric light, heat or power within two or more counties of this state, and operating under franchises heretofore granted, may have the term of each of said franchises under which it is operating increased to not exceeding fifty years, including the unexpired portion of the term of such former franchise or franchises, by filing with the board of county commissioners of the counties respectively wherein such former franchise was granted, an application, in writing, setting forth: First, the name of the applicant, the county or counties within which said applicant is operating, the time when such former franchise was granted, the unexpired portion of the term thereof, and the time for which such franchise is to be extended, which, together with the unexpired term of said former franchise, shall not exceed fifty years.

Hearings on applications for extensions.

SEC. 9. Upon the receipt of an application for the extension of the term of any franchise mentioned in section 8, the board of county commissioners of said county shall set said application for hearing at its next regular meeting thereafter, and cause such notice thereof to be given as it may deem reasonable, and at said hearing objections to extending the term of said franchise may be heard and considered.

Limit of extension.

SEC. 10. If upon the hearing of said application it appears to the satisfaction of the board of county commissioners that the applicant is engaged in the business of furnishing electric light, heat or power within two or more counties, including the county in which the application provided in section 8 is pending, the said board shall thereupon extend the term of the franchise under which the applicant is operating for not exceeding fifty years, including the unexpired portion of the term of such former franchise; *provided, however*, that the said applicant shall, within thirty days after such franchise extending the term of said former franchise is granted, file with the county recorder of such county an agreement, properly executed by the grantee, to pay annually, on the first Monday of July

of each year, to the county treasurer of said county, for the benefit of the school fund of said county, two per cent of the net profits made by such grantee in the operation of its electric-light, heat and power lines within said county, and no extension of the term of said original franchise shall be effective in said county until such agreement shall be filed.

Fee for franchise.

SEC. 11. Upon the granting of a franchise, as provided in section 4, or the extension of the term of a franchise heretofore granted as provided in section 10, the county clerk shall issue to the grantee a formal franchise for the term so granted or extended by said county commissioners, and for which a charge of five dollars shall be made by said county clerk.

HOMESTEADS

2142. Stats. 1861, 186, regulating the settlement of estates, provided in section 123 for the setting aside of the homestead to the widow and minor children, and section 126 provided that, if there was no law in force exempting property from execution, certain property should be set aside, including the homestead, as defined in that section. This section provided that if property declared a homestead be separate property, both must join in the declaration, and if it remain separate property until the death of one spouse, homestead rights therein shall cease, and it shall belong to the party or his heirs to whom it belonged when filed upon; and Rev. Laws, 2145, provided that no exemption to the surviving spouse should be allowed, where the homestead declaration had been filed upon the separate property of either spouse. Rev. Laws, 5957, authorizes the court, upon the return of the inventory, to set apart for use of decedent's family the homestead as designated by the general homestead law "now in force," whether designated as required by said law or not; and further provides that if the property declared upon be separate property, both spouses must join in the declaration, and if it remain separate property until the death of one of them, the homestead right shall cease, and it shall belong to the party to whom it belonged when filed upon. Section 126 of the act of 1861 was omitted from the act of 1897 and section 123, corresponding to section 101 of the latter act, was modified. Held, under section 101, construed with the other statutes, that a widow cannot have set apart to her, as a homestead, land which was her husband's separate property at his death, and had not been declared on as a homestead; there being other heirs. In *Re Cook's Estate*, 34 Nev. 233-238 (117 P. 27).

Under similar sections (Cutting, 186; Stats. 1865, 225; Stats. 1879, 140) it was held that, though the homestead was not registered as required by law, the husband's sole conveyance or encumbrance of it cannot pass title. *First National Bank v. Meyers*, 39 Nev. 235, 242-250 (150 P. 308).

Cited, *Porch v. Patterson*, 39 Nev. 257, 264 (156 P. 439).

Cited, *Clay v. Scheeline B. & T. Co.*, 40 Nev. 14 (159 P. 1081).

Under this section and others it was held that, although a homestead was not registered as required by law, the husband's sole conveyance or encumbrance of it did not affect the wife's right in the homestead, which could not be alienated unless the instrument was executed and given by both. *First National Bank v. Meyers*, 40 Nev. 284, 288, 290, 293-297 (150 P. 368; 161 P. 929).

2145. See In *Re Cook's Estate*, 34 Nev. 217, under section 2142.

HOTELS

An Act relating to hotels, defining the same, providing regulations in connection therewith, providing for the sanitation of the rooms of such hotels, providing for the sanitary method and manner of conducting such hotels, providing for the enforcement of this act, and providing a penalty for the violation thereof.

Approved March 15, 1915, 156

Must be kept sanitary.

SECTION 1. Every building or structure, kept as, used as, maintained as, or held out to the public to be, a place where sleeping or rooming accommodations are furnished to the transient public, whether with or without meals, shall, for the purpose of this act, be deemed to be a hotel, and whenever the word "hotel" shall occur in this act, it shall be deemed to include lodging-house and rooming-house, where transient trade is solicited.

Bedding must be clean.

SEC. 2. All bedding, bedclothes, or bed covering, including mattresses, quilts, blankets, sheets, pillows, or comforters used in any hotel in this state must be kept clean and free from all filth or dirt; *provided*, that no bedding, bedclothes, or bed covering, including mattresses, quilts, blankets, sheets, pillows, or comforters, shall be used which is worn out or unsanitary for use by human beings according to the true intent and meaning of this act.

Bedbugs exterminated.

SEC. 3. Any room in any hotel in this state, which is or shall be infested with vermin or bedbugs or similar things, shall be thoroughly fumigated, disinfected, and renovated until such vermin or bedbugs or other similar things are entirely exterminated.

Rooms free from dirt.

SEC. 4. Every room in any hotel in this state used for sleeping purposes, must be free from any and every kind of dirt or filth of whatsoever nature, and the walls, floors, ceiling, and doors of every such room shall be kept free from dirt.

Sufficient ventilation.

SEC. 5. Every room in any hotel, used for sleeping purposes, shall have devices, such as a window or transom, so constructed as to allow for the proper and a sufficient amount of ventilation in each such room.

Sheets of certain size.

SEC. 6. Every bed, for the accommodation of any person or persons or guests, kept or used in any hotel in this state, must be provided with a sufficient supply of clean bedding and must be provided with sheets at least ninety-eight (98) inches long and of sufficient width to completely cover the mattress and spring, and pillow slips as often as assigned to a different person.

Infected room must be fumigated.

SEC. 7. Whenever any room in any hotel shall have been occupied by any person having a contagious or infectious disease, the said room shall be thoroughly fumigated under the direction of the health officer, his authorized deputy or deputies, or any agent provided for by this act, and all bedding therein thoroughly disinfected before said room shall be occupied

by any other person; but, in any event, such room shall not be let to any person for at least forty-eight (48) hours after such fumigation or disinfection.

Towels must be provided.

SEC. 8. Every hotel within this state, having a public washstand or washbowl, where different persons gather to wash themselves, must keep a sufficient supply of clean individual towels for the use of such persons within easy access of or to such persons and in plain sight and view. Nothing in this section shall be construed as excluding the use of crepe or paper towels, or the automatic roller towel.

Disinfection of sewers.

SEC. 9. Every hotel in this state shall have proper facilities for sewage disposal and shall be kept free from effluvia arising from any sewer, drain, privy, cesspool, or other source within the control of the proprietor, owner, manager, agent, or other person in charge. Any water-closet, privy, or cesspool in connection with any hotel shall be disinfected as often as may be necessary to keep them at all times in a sanitary condition.

Penalty.

SEC. 10. Every proprietor, owner, manager, lessee, or other person in charge of any hotel in this state who shall fail to comply with this act, whether through the acts of himself, his agent or employees, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars or more than one hundred dollars, or shall be imprisoned for not more than three months, and every day that any hotel shall be kept in violation of any of the provisions of this act such keeping shall constitute a separate offense.

Who to enforce act.

SEC. 11. The commissioner of food and drugs is hereby charged with the enforcement of this act. He shall appoint such agent or agents as he deems necessary to carry out the provisions of this act and shall make uniform rules and regulations pertaining thereto. He shall keep a record of hotels inspected, and said record or any part thereof may, in the discretion of the commissioner, be included in the annual report to the governor, which said commissioner is already authorized to make by law.

Inspection permitted.

SEC. 12. The commissioner of food and drugs, or his duly authorized agent or agents, shall have access at any time to any hotel in this state for the purpose of making inspections and carrying out the provisions of this act.

HUSBAND AND WIFE

2155. Under this section it is held that, though a homestead was not registered as required by law, the husband's sole conveyance or incumbrance of it cannot pass title. *First National Bank of Ely v. Meyers*, 39 Nev. 235, 243, 247 (150 P. 308).

Cited, *In Re Williams*, 40 Nev. 245 (161 P. 741; L. R. A. 1917C, 602).

See *In Re Cook's Estate*, 34 Nev. 217, under section 2142.

Since the adoption of our constitution and the enactment of a law more clearly defining and differentiating the property rights of husband and wife, it is evident that it is incum-

bent upon the court, in making disposition of the property of the parties in granting a divorce, to consider the fact that now all property of husbands and wives is held in common or belongs solely to one or the other. *Walker v. Walker*, 41 Nev. 8 (164 P. 658).

2155-2189. A conveyance of property to a wife, consummated before the adoption of the constitution or the enactment of the community estate law (Stats. 1864-5, 239) which changed the common law so as to provide that estates acquired by a husband or wife shall be community property, is governed by the rule of the common law and not affected by the statute. *Winters v. Winters*, 34 Nev. 323, 330 (123 P. 17, 1135).

Cited, *In Re Cook's Estate*, 34 Nev. 237 (117 P. 27).

2156. See *First National Bank of Ely v. Meyers*, 39 Nev. 235, 237, 243, under section 2155.

Under this section and Rev. Laws, 2165, the right of a wife in the community property during her husband's life is not a mere expectancy but is a property interest, though subject to the husband's control, and at the husband's death it is merely freed from his control, and does not pass under the inheritance laws, and therefore is not subject to taxation under Stats. 1913, 411, imposing a tax on all property passing by will or statutes of inheritance. *In Re Williams*, 40 Nev. 241, 245, 254 (161 P. 741; L. R. A. 1917C, 602).

2157. See *In Re Cook's Estate*, 34 Nev. 217, under section 2142.

2160. Husband controls community property.

SEC. 6. The husband shall have the entire management and control of the community property, with the like absolute power of disposition thereof, except as hereinafter provided, as of his own separate estate; *provided*, that no deed of conveyance or mortgage of a homestead as now defined by law, regardless of whether a declaration thereof has been filed or not, shall be valid for any purpose whatever unless both the husband and wife execute and acknowledge the same as now provided by law for the conveyance of real estate; *provided further*, that the wife shall have the entire management and control of the earnings and accumulations of herself and her minor children living with her, with the like absolute power of disposition thereof, when said earnings and accumulations are used for the care and maintenance of the family. *As amended, Stats. 1917, 121.*

2160. Similar act (Stats. 1873, 193) cited, *Porch v. Patterson*, 39 Nev. 254 (156 P. 439); *First National Bank v. Meyers*, 39 Nev. 244 (150 P. 308). Similar act (Stats. 1897, 24) cited, *Porch v. Patterson*, 39 Nev. 269 (156 P. 439).

See *First National Bank of Ely v. Meyers*, 39 Nev. 235, under section 2155.

Cited, *In Re Williams*, 40 Nev. 254 (161 P. 741; L. R. A. 1917C, 602).

2164. The use of the expression "goes to" the wife in Rev. Laws, 2165, different from the expression "belongs to" the husband in this section, does not show an intention of the legislature that the interest of the wife in the community should vest only after the husband's death, in view of Const. art 4, sec. 31, requiring laws to be passed defining the rights of the wife to property held in common with her husband, since "held" does not convey the idea of mere expectancy but imports ownership. *In Re Williams*, 40 Nev. 241, 246, 254, 257 (161 P. 741; L. R. A. 1917C, 602).

Stats. 1915, 149, does not affect or repeal this section or Rev. Laws, 2165, relating to descent of community property, and where spouse dies intestate all the community property goes to the surviving spouse. *In Re Kattenhorn's Estate*, 41 Nev. 375, 381, 382 (171 P. 164).

2165. Similar section (Cutting, 520) cited, *In Re Cook's Estate*, 34 Nev. 239 (117 P. 27).

See *Estate of Williams*, 40 Nev. 241, under section 2164.

2166. Under this section it is held that, a wife securing in a foreign state a decree divorcing her from her husband, who was a resident of the State of Nevada, in which state the community property of the parties was situated, could not thereafter maintain an independent action in the Nevada courts to secure a division of the community property

pursuant to the statute; the statute having reference only to the court granting the divorce. *Keenan v. Keenan*, 40 Nev. 351, 353, 356 (164 P. 351).

This section determines the right of the parties to the community property on dissolution of the marriage, though the earlier statute, Rev. Laws, 5841, empowering the court to dispose of the property on granting a divorce, has not been amended or repealed in terms. *Walker v. Walker*, 41 Nev. 4, 9, 11 (164 P. 653).

In consideration of this section, Stats. 1864-65, 239, sec. 12 (Rev. Laws, 2166, 2188, 5841, and 5843), it was held, in view of another section of the same act appearing as Rev. Laws, 5843, and declaring that when the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same portion of his lands and property as if he were dead; but in other cases the court shall set apart such portion for her support and the support of their children that shall be deemed just, and, as the act of 1861 was passed before the creation of community property, effect cannot be given to it particularly in view of the construction by the California courts of the later statutes, which must be deemed to have been adopted when the statutes were adopted from that state; hence decree of divorce in favor of the husband for desertion does not, though there was no adjudication as to property rights, deprive the wife of her rights in the community property. *Johnson v. Garner*, 233 F. 756, 757, 762-764.

2168. Cited, *In Re Williams*, 40 Nev. 245 (161 P. 741; L. R. A. 1917C, 602).

2169. Cited, *In Re Williams*, 40 Nev. 245 (161 P. 741; L. R. A. 1917C, 602).

2172. The declaration of this section is subject to the exception of Rev. Laws. 2173. allowing either to enter into any contract with the other subject to the general rules which control the actions of parties occupying relations of confidence and trust towards each other, and under the latter provision one spouse may acquire an interest, legal or equitable, in the separate property of the other which the court, in granting a divorce, can protect under Rev. Laws, 5841. *Walker v. Walker*, 41 Nev. 4, 9 (164 P. 653).

2173. See *Walker v. Walker*, 41 Nev. 4, under section 2172.

2180. Cited, *Johnson v. Garner*, 233 F. 757, 763.

2188. In consideration of this section, Stats. 1864-65, 239, sec. 12 (Rev. Laws. 2166, 2188, 5841, and 5843) it was held, in view of another section of the same act appearing as Rev. Laws, 5843, and declaring that when the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same portion of his lands and property as if he were dead; but in other cases the court shall set apart such portion for her support and the support of their children that shall be deemed just, and, as the act of 1861 was passed before the creation of community property, effect cannot be given to it particularly in view of the construction by the California courts of the later statutes, which must be deemed to have been adopted when the statutes were adopted from that state; hence decree of divorce in favor of the husband for desertion does not, though there was no adjudication as to property rights, deprive the wife of her rights in the community property. *Johnson v. Garner*, 233 F. 757, 763.

INSANE

2195. Repealed, Stats. 1913, 348, post.

2196-7. Repealed, Stats. 1913, 348, post.

2198-9. Repealed, Stats. 1913, 348, post.

2200-1. Repealed, Stats. 1913, 348, post.

2202-7. Repealed, Stats. 1913, 348, post.

2208-9. Repealed, Stats. 1913, 348, post.

2210. Repealed, Stats. 1913, 348, post.

2211-12. Repealed, Stats. 1913, 348, post.

An Act concerning the insane of the state, creating a board of commissioners for the care of the indigent insane, and to provide for the care of the insane.

Approved March 25, 1913, 348

Site of hospital.

SECTION 1. The state grounds at Reno are hereby selected as the site for the Nevada hospital for mental diseases, and the said hospital is hereby located on said grounds.

Official name of hospital.

SEC. 2. The public institutions of the state and the buildings appertaining thereto established and maintained for the care of the insane of the state shall be known and called the Nevada hospital for mental diseases, and the words "Insane Asylum," "Institute for the care of the insane," and all words of like import used in any law, process, investigation, subpoena, or commitment, or in relation to any board or commission pertaining to or in any way concerning the arrest, examination, detention or care of the insane or mentally diseased in this state shall be deemed to relate to said Nevada hospital for mental diseases, and all processes and proceedings relating to the insane or mentally diseased of the state, shall run to and be held in that name.

Board for care of insane.

SEC. 3. The governor, state controller and state treasurer are hereby constituted a board of commissioners for the purpose of providing for the care and maintenance of the indigent insane of the state.

Quorum.

SEC. 4. A majority of said board shall constitute a quorum for the transaction of business.

Board to control hospital—Biennial report.

SEC. 5. The board of commissioners as named in this act shall have full power and exclusive control of and over all the grounds, buildings, property and inmates of the hospital, and shall furnish or cause to be furnished all needful supplies, provisions, and medicines for the care of the insane, and have charge of all other matters connected with the institution. They shall establish such rules, regulations and by-laws for the government thereof as they may deem proper. The board of commissioners shall cause to be kept a record of their proceedings, which shall at all times be open to inspection by a committee of the legislature. During the first week of the session a report shall be submitted to the legislature, showing the annual receipts

and expenditures, the condition of the hospital, number of patients admitted during the year, number remaining in the hospital at the date of the report, and all matters touching the general affairs of the institution as they may deem proper, and shall from time to time visit the hospital, examine into its affairs, condition, government, and make a thorough inspection thereof.

To elect superintendent—Salary and duties.

SEC. 6. The board of commissioners shall elect one resident physician who shall be the general superintendent of the hospital, subject at all times to the order and direction of said board, who shall have power at any time to discharge and remove said superintendent whenever in their judgment it shall be deemed proper for the best interest of the state. The superintendent so elected shall reside at the hospital, be a graduate in medicine, and receive a salary of two thousand four hundred dollars per year, payable monthly, in equal installments. He shall cause to be kept a fair and full account of all his doings, and of the entire business and operations of the institution, and submit a monthly report to the board of commissioners. The superintendent shall employ all necessary help needed at the hospital, subject to the approval of the board of commissioners.

District judge to commit—Indigent patients.

SEC. 7. It shall be the duty of the judge of the district court in each judicial district in this state, upon the application of any person under oath, setting forth that any person, by reason of insanity, is unsafe to be at large, because of his homicidal, suicidal, or incendiary disposition, and even these must not be cases of delirium tremens or harmless imbecility or feeble-mindedness, either congenital or as the result of alcoholic excesses, drugs, or the natural failing of old age, to cause the said person to be brought before him at such time and place as he may direct. Said judge may direct the clerk of said court to issue subpoenas for the attendance of witnesses at the examination of said person, and such witnesses shall be paid their actual expenses caused by their attendance aforesaid, the amount of said expenses to be determined by said judge, and paid as he shall order; and the said judge shall also cause to appear at the same time and place one or more licensed practicing physicians, who shall proceed to examine the person alleged to be insane; and if said physicians, after careful examination, shall certify upon oath that the charge is correct, and if the judge is satisfied that such person is, by reason of insanity, unsafe to be at large, and is incompetent to provide for his or her own proper care and support, and has no property applicable for such purpose, and no kindred in the degree of husband or wife, father or mother, children, brother, or sister living within this state of sufficient means or ability to provide properly for such care and support, he shall cause the said indigent insane person to be conveyed to the Nevada hospital for mental diseases of this state, at the expense of the state, and place the said person in charge of the proper person having charge of said Nevada hospital for mental diseases, together with a copy of the complaint, commitment, and physician's certificate, which shall be in such form as the board of commissioners may prescribe, and a full and complete transcript of the notes of the official court reporter made at the examination of said person before the committing magistrate. Said physician or physicians shall be paid a reasonable sum for their services, the amount to be determined by said judge, and paid as he shall order, but not to exceed ten dollars for a half-day, nor twenty dollars for a whole day. Said official reporter shall be compensated as ordered by said judge, the fees to be the same as those prescribed in section 4913 of the Revised Laws of 1912. *As amended, Stats. 1915, 88.*

County clerk may commit, when.

SEC. 8. Whenever, by reason of the absence of the district judge from the county, an insane person cannot be brought before him for examination he may be taken before the county clerk of such county, and thereupon said county clerk shall be vested with power to hold such examination and discharge such person or commit him to the said hospital in the same manner as may be now done by the district judge.

Concerning pay patients.

SEC. 9. The district judge shall cause inquiry to be made touching the ability of insane persons committed by him to bear the expense attending the arrest, examination, transmission to Reno, and such other charges as may be necessary in order to properly provide for his or her support. In any case where the insane person is able, by the possession of money, or real or personal property, to pay said expenses, the district judge shall appoint a guardian for said insane person, who shall be subject to the general law in relation to guardians, as far as the same may be applicable and when there is not sufficient money in hand, the judge shall order the sale of the property of such person, or so much thereof as may be necessary, and from the proceeds said guardian shall pay all proper costs and charges incidental to arrest, transmission and proper care and support of such insane person, during the period of his or her insanity, or so long as there shall be sufficient means to meet said charge and expenses. And in case such insane person has no means applicable to his or her own support, but has kindred in the degree of husband or wife, or (if a minor) father or mother living within this state of sufficient means and ability to support such insane person, the judge before whom the examination is had shall order that all expenses and charges be paid by the nearest of such kindred, or may assess the same among such kindred as he may deem just and equitable, causing such charges as the state may be obliged to pay to the directors of the Nevada hospital for mental diseases, to be paid quarterly in advance to the treasurer, together with all costs and expenses necessarily incurred in transmitting said person to said Nevada hospital for mental diseases. And from the date of such order of the district judge, such expenses and charges shall be a lien against the property of such kindred and may be enforced as other liens against real or personal property.

Guardians of patients.

SEC. 10. The district judge shall require of the guardian of any insane person appointed by him, in addition to the bond now required by law to be given by guardians, to enter into bond with good and sufficient sureties, payable to the State of Nevada, conditioned for the prompt payment in advance to the state treasurer of all charges and expenses set forth in this act, so long as said insane person shall be cared for and supported by this state, or so long as said means or property shall be sufficient therefor, which bond shall be filed in the office of the secretary of state at the same time that other papers in relation to insane person are filed; and all sums of money so received by the state treasurer, as well as those sums received from kindred, as provided in section 9 of this act, shall be paid over to the state treasurer to the credit and become a part of the insane fund created by section 12 of this act, under a sworn statement, at least once in every three months, and for all moneys thus paid the state treasurer shall take duplicate receipts, one of which shall be filed with the state controller. When the means of any insane person shall become exhausted, or the kindred mentioned in this act shall become unable longer to provide for the support of such insane person, upon a proper showing to the judge of

the district court where such person was committed, he shall certify such fact to the state treasurer, who shall immediately transfer the same to the indigent list, and from the date of such certificate said guardian or kindred, as the case may be, shall be released from any further liability on account of such bond or insane person.

Concerning paying patients.

SEC. 11. Paying patients whose friends or property can pay their expenses shall pay according to the terms directed by the board of commissioners; but the insane poor shall in all respects receive the same medical care and treatment from the institution and good, wholesome food, and no record of debt shall be made against them.

Support paid from state treasury.

SEC. 12. All sums due for the support, care and clothing of the insane, and all other needful expenses of the Nevada hospital for mental diseases, shall be certified by the board of commissioners of said Nevada hospital for mental diseases, and approved by the board of examiners, and audited by the controller, and paid by the state treasurer out of any moneys in the state treasury appropriated for that purpose.

Counties to pay for keep of idiots and feeble-minded.

SEC. 13. It shall be the duty of the district judge in each judicial district of this state upon the application of any person under oath that any person within said district who has been a bona-fide resident of the state for more than five years and of the county wherein he is at the time residing for one full year next preceding the making of said application, is an idiot or feeble-minded person, to cause such person to be brought before him at such time and place as he may direct, and said judge also shall cause to appear at such time and place such witnesses as he may deem proper and one or more licensed practicing physicians; said physicians shall proceed to examine the person and the witnesses so brought before said judge, the witnesses to be placed under oath, and if said physicians, after careful examination, shall certify upon oath that the charge is correct, giving their reasons therefor, and if the district judge is satisfied that such person is an idiot or feeble-minded person and is incompetent to provide for his or her own proper care and support, and has no property applicable to such purpose and no kindred in the degree of husband or wife, father or mother, child, brother or sister living within this state of sufficient means or ability to provide properly for such care and support and is further satisfied that it will be for the best interests for said indigent and the county of which he is at the time a resident, he shall cause the said indigent, idiot, or feeble-minded person to be conveyed to the Nevada hospital for mental diseases of this state, at the expense of the county of which said person was a bona-fide resident, during the period of one year next preceding the making of such application, and placed in charge of the proper person having charge of said Nevada hospital for mental diseases, together with a copy of the complaint, commitment and physician's certificate, which shall be in such form as the board of commissioners for the care of the indigent insane of the State of Nevada may prescribe.

Counties must pay quarterly.

SEC. 14. The county of which any person committed to said Nevada hospital for mental diseases, under the provisions of section 13 of this act, was a bona-fide resident during all of the year next preceding the making of application for his or her said commitment, shall pay into the treasury of the State of Nevada, quarterly, on the first Monday of January, April, July, and October, from and after such commitment the actual expense of

maintaining and keeping such person at said Nevada hospital for mental diseases for which said county shall be liable to the State of Nevada, the amount of said expense to be certified to the board of commissioners of such county by the superintendent of said Nevada hospital for mental diseases.

Concerning insane convicts.

SEC. 15. Whenever a convict, while undergoing imprisonment in the Nevada state prison, shall become insane and be so adjudged by a commission of lunacy appointed by the court as in other cases of insanity, it shall be the duty of the warden to deliver such convict to the superintendent of the Nevada hospital for mental diseases, for detention and treatment therein.

Disposition of convicts—Escapes.

SEC. 16. The superintendent of the Nevada hospital for mental diseases shall receive such insane convict and safely keep him, and if such convict be restored to sanity before the expiration of his sentence to said prison, shall deliver him to the warden thereof, who shall retain such convict therein for the unexpired term of his sentence, unless said convict shall be released by order of the board of pardons. An escape from said Nevada hospital for mental diseases by any convict therein, under the provisions of this act shall be deemed an escape from the state prison and be punished as such.

Transportation a state charge.

SEC. 17. The expense of transporting indigent insane persons from the various counties of the state, to the said Nevada hospital for mental diseases, shall be a charge upon the state, and shall be paid out of the funds appropriated for the support of said Nevada hospital for mental diseases.

Hospital has charge of patients in transit—Relative may act.

SEC. 18. When any commitment is issued under the provisions of this act, the person committed, together with the warrants of the judge and certificates of the physician and a full and complete transcript of the notes of the official court reporter, made at the examination of such person, before the committing magistrate, must be delivered to the sheriff of the county, and by him to the agent appointed by the superintendent of said Nevada hospital for mental diseases to convey the insane person to the hospital. Upon receipt of notice from the sheriff, the superintendent must at once designate some person among the employees of the hospital as an agent to transport such insane person to the hospital; *provided, however*, that a relative of the insane person in the first degree shall have the first right at his or her own expense to act as attendant for such insane person. No female insane or idiotic person may be conveyed to said Nevada hospital for mental diseases without at least one female attendant or a relative in the first degree.

Patients on probation—Lunacy commission.

SEC. 19. All patients committed by any district judge or county clerk to the said Nevada hospital for mental diseases, shall during the period of thirty days from and after their commitment therein be deemed to be on probation. At the end of said probation period, if the person having charge of said Nevada hospital for mental diseases deems, from his observation of any patient so committed, that said patient is not dangerous to be at large by reason of insanity, but only because of feeble-mindedness or illness or bodily infirmity, the person having charge of said Nevada hospital for mental diseases shall notify the board of commissioners having charge of the Nevada hospital for mental diseases of the facts and if said board or

the majority of the members thereof, direct, the person having charge of the said Nevada hospital for mental diseases shall request the district judge of the county in which said hospital is situated to appoint a commission of three competent physicians to examine said patient. If such commission, after due examination and investigation, determine that said patient is not unsafe, by reason of insanity, to be at large, but that it is unsafe to permit him to go at large because of his feeble-mindedness, illness or bodily infirmities, and shall so certify to the person in charge of said Nevada hospital for mental diseases, he shall forthwith notify the board of county commissioners of the county from which said patient is committed of the facts, and said county commissioners shall thereupon cause said patient to be taken back to said county at the expense of said county; or if said county commissioners shall agree to pay into the treasury of the State of Nevada, quarterly, on the first Monday of January, April, July, and October, from and after the commitment of said patient the actual expense of maintaining and keeping such patient at said Nevada hospital for mental diseases, said patient may thereafter be kept at said Nevada hospital for mental diseases at the expense of said county.

Idiotic minors, when county charge.

SEC. 20. The said board of commissioners of the said Nevada hospital for mental diseases is hereby authorized to receive and care for the indigent feeble-minded minors of the State of Nevada, to hold them subject to such an arrangement as may be made for their proper care and education, in an institution of a neighboring state to be selected by said board. And the expense of the care and maintenance of such feeble-minded minors shall be a charge against the county from which such minor or minors was committed.

Certain acts repealed.

SEC. 21. Those certain acts entitled "An act concerning the insane of this state," approved March 11, 1879, "An act to determine and definitely fix the legal name of the public institution for the care of the indigent insane belonging to the State of Nevada," approved March 12, 1895, "An act creating a board of commissioners for the care of the indigent insane of the State of Nevada," approved February 4, 1887, "An act to provide for the care of the insane of the State of Nevada and create a fund for that purpose," approved March 2, 1869, "An act for the taking care of the insane in the State of Nevada," approved February 24, 1881, "An act to provide for the transfer of insane convicts to the state insane asylum," approved March 1, 1883, "An act to provide for the commitment of insane persons to the insane asylum," approved February 21, 1889, "An act to provide for the admission of certain persons into the Nevada state insane asylum," approved February 27, 1893, are hereby repealed.

INTOXICATING LIQUORS

An Act to prohibit the manufacture, sale, keeping for sale, and gift, of malt, vinous and spirituous liquors, and other intoxicating drinks, mixtures or preparations, making the superintendent of the Nevada state police ex officio commissioner of prohibition, and defining his duties; and providing for the enforcement of this act, and prescribing penalties for the violation thereof.

Enacted Pursuant to Direct Vote of the People, General Election,
November 5, 1918. Stats. 1919, 1.

"Liquor" defined.

SECTION 1. The word "liquors" as used in this act shall be construed to embrace all malt, vinous or spirituous liquors, wine, porter, ale, beer or any other intoxicating drink, mixture or preparation of like nature; and all liquids, mixtures or preparations, whether patented or not, which will produce intoxication, and all beverages containing more than one-half of one per centum of alcohol by volume, shall be deemed spirituous liquors, and all shall be embraced in the word "liquors," as hereinafter used in this act; *provided*, nothing in this section shall be deemed as prohibiting the manufacture or sale of malt drinks, or so-called near beer or other similar beverage of whatever name, which does not contain to exceed one-half of one per centum of alcohol by volume, nor to prohibit the manufacture or sale of vanilla, lemon or other similar extracts now in common use for culinary purposes, or perfumes or other similar articles used exclusively for toilet purposes. *As amended, Stats. 1919, 220.*

Manufacture, sale, keeping, storing prohibited—Exception.

SEC. 2. Except as hereinafter provided, the manufacture, sale, keeping or storing for sale in this state, or offering or exposing for sale of liquors or absinthe or any drink compounded with absinthe are forever prohibited in this state, except liquors manufactured prior to July first, one thousand nine hundred and sixteen, and stored in United States bonded warehouses in the custody of the United States collector of internal revenue, and the said liquors when tax paid and in transit from such warehouses to points outside of this state.

Further prohibitions.

SEC. 3. Except as hereinafter provided, if any person acting for himself, or for, or through another, shall manufacture or sell or keep, store, offer or expose for sale; or solicit or receive orders for any liquors, or absinthe or any drink compounded with absinthe, he shall be deemed guilty of a misdemeanor for the first offense hereunder, and upon conviction thereof shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned in the county jail not less than two nor more than twelve months, and upon conviction of the same person for the second offense under this act, he shall be guilty of a felony and be confined in the penitentiary not less than one nor more than five years; and it shall be the duty of the prosecuting attorney in all cases to ascertain whether or not the charge made is the first or second offense; and if it be a second offense, it shall be so stated in the information or indictment returned, and the prosecuting attorney shall introduce the record evidence before the trial court of said second offense, and shall not be permitted to use his discretion in charging said second offense, or in introducing evidence and proving the same on the trial; and any person, except a common carrier, who shall act as the agent or employee of such manufacturer or such seller, or person so keeping, storing, offering or exposing for sale said liquors, or act as the

agent or employee of the purchaser of such liquors, shall be deemed guilty of such manufacturing or selling, keeping, storing, offering or exposing for sale, as the case may be; and in case of a sale in which a shipment or delivery of such liquors is made by a common, or other carrier, the sale thereof shall be deemed to be made in the county wherein the delivery thereof is made by such carrier to the consignee, his agent or employee.

An information, indictment or criminal complaint for an offense committed under the provisions of this section, shall be sufficient, which shall charge in substance and effect that within one year last past, the defendant, in the said county of.....did unlawfully manufacture, sell, offer, keep, store and expose for sale, and solicit and receive orders for liquors and absinthe, and drink compounded with absinthe, against the peace and dignity of the State of Nevada.

Exceptions.

SEC. 4. The provisions of this act shall not be construed to prevent any one from manufacturing, for his own domestic consumption, wine or cider; or to prevent the manufacture from fruit grown exclusively within this state of vinegar and nonintoxicating cider for use or sale; or to prevent the manufacture and sale at wholesale to druggists only of pure grain alcohol for medicinal, pharmaceutical, scientific and mechanical purposes, or wine for sacramental purposes by religious bodies; or to prevent the sale and keeping and storing for sale by druggists of pure grain alcohol for mechanical, pharmaceutical, medicinal and scientific purposes, or of wine for sacramental purposes, by religious bodies, or any United States pharmacopœia or national formulary preparation in conformity with the Nevada pharmacy law, or any preparation which is exempted by the provisions of the national pure food law, and the sale of which does not require the payment of a United States liquor dealer's tax. But no druggist shall sell any such grain alcohol except for medicinal, scientific, pharmaceutical and mechanical purposes, or wine for sacramental purposes, except as hereinafter provided, and the same shall not be sold by such druggist for medicinal purposes, except upon a written prescription of a physician of good standing in his profession and not of intemperate habits, or addicted to the use of any narcotic drug, prescribing the amount of alcohol, the disease or malady for which it is prescribed, and how it is to be used, the name of the person for whom prescribed, the number of previous prescriptions given by such physician to such person within the year next preceding the date of such prescription, and stating that the same is absolutely necessary for medicine, and not to be used as a beverage, and that such physician, at the time such prescription was given, made a personal examination of such person, and that such person is known to such physician to be of temperate habits and not addicted to the use of any narcotic drug, and only one sale shall be made upon such prescription, and such prescription shall be at all times kept on file by such druggist and open to the inspection of all state, county and municipal officers. It shall be the duty of such druggist to register in a book kept for that purpose all prescriptions from physicians mentioned in this section, stating the name of the party for whom prescribed, the date of the prescription, the name of the physician by whom the prescription is issued, the quantity of such alcohol and the use for which prescribed, and such record shall at all times be open to the same inspection as such prescriptions.

It shall be lawful for a druggist to sell grain alcohol for pharmaceutical, scientific and mechanical purposes, or wine for sacramental purposes by religious bodies, only to any person, not a minor, and who is not of intemperate habits, or addicted to the use of narcotic drugs, who shall, at the

time and place of such sale, make an affidavit in writing signed by himself before such druggist or a registered pharmacist at the time and place in the employ of such druggist, stating the quantity and the time and place and fully for what purpose and by whom such alcohol or wine is to be used; that affiant is not of intemperate habits or addicted to the use of any narcotic drug; and that such alcohol or wine is not to be used as a beverage, or for any purpose other than that stated in such affidavit. Such affidavit shall be filed and preserved by such druggist and be subject to inspection at all times by any state, county or municipal officer, and a record thereof made by such druggist in the record book mentioned in this section, showing the date of the affidavit, by whom made, the quantity of such alcohol, or wine, and when, where, for what purpose and by whom to be used. Only one sale shall be made upon such affidavit, and only in the county where the same is made, and no greater quantity than is therein specified. For the purpose of this act, any druggist or registered pharmacist making such sale shall have authority to administer such oath.

If any druggist, owner of a drug store, registered pharmacist, clerk, or employee shall upon such prescription or affidavit, or otherwise, knowingly sell or give any such alcohol or wine to any person who is of intemperate habits or addicted to the use of any narcotic drug, or knowingly sell or give the same to any one to be used for any purpose other than that named in said affidavit or prescription, or who shall sell or give away any liquors without such affidavit or prescription, he shall be deemed guilty of a misdemeanor and punished by fine of not less than one hundred nor more than one thousand dollars and confined in the county jail not less than thirty days nor more than twelve months. In any prosecution against a druggist, owner of a drug store, registered pharmacist, clerk or employee, for selling or giving liquor contrary to law, if a sale or gift be proven, it shall be presumed that the same was unlawful in the absence of satisfactory proof to the contrary and the presentation of such prescription or affidavit by the defendant at the time of the trial for such sale or gift, shall be sufficient to rebut the presumption arising from the proof of such sale or gift. *Provided*, the jury shall believe, from all the evidence in the case, that such sale or gift was made in good faith under the belief that such prescription or affidavit and statements therein were true; *and, provided further*, that such druggist, owner of a drug store, registered pharmacist, clerk or employee shall have complied with all other provisions of this act relating to the sale or gift.

An information, indictment, or criminal complaint against any druggist, registered pharmacist, clerk or employee for an offense committed under the provisions of this section, shall be sufficient, which shall charge in substance and effect, that the defendant, within one year last past, in said county of....., did unlawfully sell, give, offer, expose, keep, and store for sale and gift, liquors, against the peace and dignity of the State of Nevada.

Persons of intemperate habits—Prescription—Penalty.

SEC. 5. If any person who is of intemperate habits or addicted to the use of any narcotic drug shall make the affidavit mentioned in the preceding section, or if any person making such affidavit shall use as a beverage, or for any purpose, or at any place other than that stated in such affidavit, or shall knowingly permit another to do so, said alcohol or wine, or any part thereof, or shall knowingly make any false statement in such affidavit, he shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than one hundred nor more than one thousand dollars, and be confined in the county jail not less than two nor more than twelve months

for the first offense hereunder; and for the second offense he shall be deemed guilty of a felony and punished by confinement in the penitentiary not less than one nor more than five years.

And if any physician who is not in good standing in his profession or who is of intemperate habits, or who is addicted to the use of any narcotic drug, shall issue any such prescription as is mentioned in the last preceding section; or if any physician shall issue such prescription without, at the time, making a personal examination of the person for whom the liquor is prescribed, or shall prescribe for any person who is in the habit of drinking to intoxication and whom he knows, or has reason to believe, is in the habit of drinking to intoxication, or shall give such prescription and make the statements therein required, or any part thereof, falsely, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred nor more than one thousand dollars and imprisoned in the county jail not less than thirty days nor more than twelve months, and in addition thereto, for the first offense under this statute, the court may, in its discretion, suspend the license of such physician for a period of six months and for each offense thereafter the court shall suspend such license for a period of six months.

Clubhouses, regulations for.

SEC. 6. Every person who shall directly or indirectly keep or maintain by himself or by associating with others, or who shall in any manner aid, assist or abet in keeping or maintaining any clubhouse, or other place in which any liquor is received or kept for the purpose of use, gift, barter, or sold as a beverage, or for distribution or division among the members of any club or association by any means whatsoever; and every person who shall use, barter, sell or give away, or assist or abet in bartering, selling or giving away any liquors so received or kept, shall be deemed guilty of a misdemeanor and upon conviction thereof be punished by a fine of not less than one hundred nor more than one thousand dollars and by imprisonment in the county jail not less than thirty days nor more than twelve months; and in all cases the members, shareholders or associates in any club or association mentioned in this section, shall be competent witness to prove any violations of the provisions of this section, or of this act, or of any fact tending thereto; and no person shall be excused from testifying as to any offense committed by another against any of the provisions of this act by reason of his testimony tending to criminate himself, but the testimony given by such person shall in no case be used against him.

Personal use in certain places prohibited.

SEC. 7. It shall be unlawful for any person to keep or have for personal use or otherwise, or to use, or permit another to have, keep or use, intoxicating liquors at any restaurant, store, office building, club, place where soft drinks are sold (except a drug store may have and sell alcohol and wine as provided by sections four and twenty-four), fruit-stand, news-stand, room, or place where bowling alleys, billiard or pool tables are maintained, livery stable, public building, park, road, street or alley. It shall be unlawful for any person to give or furnish to another intoxicating liquors. Any one violating this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars, nor more than one thousand dollars, and be imprisoned in the county jail not less than two nor more than twelve months; *provided*, that no common carrier, for hire, nor any other person, for hire or without hire, shall bring or carry into this state, or carry from one place to another within the state intoxicating liquors for another, even when intended for personal use; except a common carrier may, for hire, carry pure grain alcohol and wine, and such

preparations as may be sold by druggists for the special purposes and in the manner as set forth in sections four and twenty-four; *and provided, further, however,* that in case of search and seizure, the finding of any liquors shall be prima facie evidence that the same are being kept and stored for unlawful purposes.

Advertising prohibited.

SEC. 8. If any person shall advertise or give notice by signs, bill-boards, newspapers, periodicals, or otherwise for himself or another of the sale or keeping for sale of liquors, or shall circulate or distribute any price-lists, circulars or order blanks advertising liquors, or publish any newspaper, magazine, periodical, or other written or printed papers, in which such advertisement or notices are given, or shall permit any such notices, or any advertisement of liquors (including bill-boards) to be posted upon his premises, or premises under his control, or shall permit the same to so remain upon such premises, he shall be guilty of a misdemeanor and be fined not less than one hundred nor more than one thousand dollars.

When officers must act.

SEC. 9. Every justice of the peace and every district court, or the judges thereof in vacation, upon information made under oath or examination that any person is manufacturing, selling, offering, or exposing, keeping or storing for sale or barter, contrary to law, any liquors, or that the affiant has cause to believe and does believe that such liquors so manufactured, sold, offered, kept, or stored for sale or barter in any house, building, or other place named therein, contrary to the provisions in this act, shall issue a warrant requiring the person suspected to be brought before him for examination, or the said house, building, or other place to be searched, and the parties found therein to be arrested and brought before him as aforesaid; and requiring the officer to whom it is directed to summon such witnesses as shall be therein named, or whose names are endorsed thereon to appear and give evidence on the examination, and in the same warrant shall require the officer to whom it is directed to seize and hold all liquors found therein, also vessels, bar fixtures, screens, glasses, bottles, jugs, and other appurtenances apparently used in the sale, keeping, or storing of such liquors contrary to law.

Probable cause.

SEC. 10. If, upon examination of such person it shall appear to such justice, court or judge, that there is probable cause to believe him guilty of the offense charged, the accused shall be required to enter into recognizance, with sufficient securities, in the sum of not less than five hundred dollars, to appear before the district court of the county having jurisdiction, to answer an indictment if one be preferred against him; and upon his failure to enter into such recognizance, the justice, court or judge shall commit him to jail to answer such indictment. All material witnesses shall also be recognized with or without sureties, as such justice, court or judge may deem proper, to appear before the district court and give evidence against the accused, and such justice, court or judge shall require the accused to give bond with sufficient security in the sum of five hundred dollars conditioned that he will not violate any of the provisions of this act during the time intervening between the date of such bond and the date set for his appearance before said district court of the county; and upon his failure to give such bond, the justice, court or judge shall commit him to jail until such bond is given or until he is discharged therefrom by the district court of the county.

Liquors prima facie evidence—Destroyed.

SEC. 11. Whenever liquors shall be seized in any room, building or place

which has been searched under the provisions of this act, the finding of such liquors in such room or of a government license therein shall be prima facie evidence of the unlawful selling, and keeping and storing for sale of the same by the person or persons, occupying such premises, or by any person named in any government license posted in such room, or his associates, agents or employees thereunder, and the proprietor or other persons in charge of the premises where such liquor was found, or who is so named in such government license, and his associates, shall be subject to trial by due process of law on the charge of selling or keeping or storing for sale unlawfully such liquor, under the indictment and form prescribed in section three of this act, and upon his conviction of selling, offering, storing, or exposing for sale such liquor unlawfully, the liquor found upon said premises shall at once be publicly destroyed by some responsible person to be appointed by the court.

Officer may enter, when.

SEC. 12. If in such house, building or place, as is hereinbefore mentioned, the sale, offering, storing, or exposing for sale of liquors is carried on clandestinely, or in such manner that the person so selling, offering, exposing, keeping or storing for sale, cannot be seen or identified by the officer or officers charged with the execution of a warrant issued under sections ten and eleven of this act, any such officer may, whenever it is necessary for the arrest or identification of the person so offending, or the seizing of such liquor, break open and enter such house, building or place.

Payment of U. S. revenue tax prima facie evidence.

SEC. 13. The payment of the special tax required of liquor dealers by the United States by any person or persons, other than druggists, within the state, shall be prima facie evidence that such person, or persons, are engaged in keeping and selling, offering and exposing for sale, liquors contrary to the laws of this state, and a certificate from the collector of internal revenue, his agents, clerks or deputies, showing the payment of such tax, and the name or names of persons to whom issued, and the names of the person or persons, if any, associated with the person to whom such tax receipt is issued, shall be sufficient evidence of the payment of such tax, and of the association of such persons for the selling and keeping, offering and exposing for sale, liquors, contrary to the laws of this state, and a certificate from the collector of internal revenue, his agents, clerks or deputies, showing the payment of such tax, and the name or names of persons to whom issued, and the names of the person or persons, if any, associated with the person to whom such tax receipt is issued, shall be sufficient evidence of the payment of such tax, and of the association of such persons for the selling and keeping, offering and exposing for sale of liquors contrary to the provisions of this act in all trials or legal inquiries.

Certain places declared public nuisances.

SEC. 14. All houses, buildings, clubrooms and places of every description, including drug stores, where intoxicating liquors are manufactured, stored, sold or vended, given away, or furnished contrary to law (including those in which clubs, orders or associations sell, barter, give away, distribute or dispense intoxicating liquors to their members, by any means or device whatever, as provided in section six of this act) shall be held, taken and deemed common and public nuisances. And any person who shall maintain, or shall aid or abet, or knowingly be associated with others in maintaining such common and public nuisance, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than one thousand dollars, and by

imprisonment in the county jail not less than thirty days nor more than twelve months for each offense, and judgment shall be given that such house, building or other place, or any room therein, be abated or closed up as a place for the sale or keeping of such liquors contrary to law, as the court may determine.

State commissioner of prohibition.

SEC. 15. The superintendent of the Nevada state police shall be ex officio state commissioner of prohibition. Wherever the word "commissioner" is used in this act, it shall mean and be taken to mean the state commissioner of prohibition.

Duties of commissioner.

SEC. 16. It shall be the duty of the commissioner, his deputies and agents, to superintend the enforcement of all provisions of this act, and of laws of this state affecting the manufacture, sale, keeping, exposing or offering for sale, or giving or soliciting or receiving orders for liquors, or laws connected in any way with the liquor traffic, to diligently inform themselves of all violations of such laws and either make report thereof to the prosecuting attorney of the proper county who shall forthwith prosecute the same as provided by law, or said commissioner, his agents or deputies, shall make complaint of any violations of any such laws before the proper court or committing justice, and conduct the prosecution thereof in any court in the state having jurisdiction of such matters; and for the purpose of enforcing such laws, the said commissioner, his agents and deputies, shall have all the powers now vested in the sheriffs, their deputies, and constables and police officers in the state. *Provided*, that nothing in this act shall be construed to take from or to relieve any of the said officers from any duty imposed upon him by any statute of the state.

Officers may maintain suits.

SEC. 17. The commissioner, his agents and deputies, and the attorney-general, prosecuting attorney, or any citizen of the county where such a nuisance as is defined in section fourteen of this act exists, or is kept or maintained, may maintain a suit in equity in the name of the state to abate and perpetually enjoin the same, and courts of equity shall have jurisdiction thereof. The injunction shall be granted at the commencement of the action and no bond shall be required.

It shall not be necessary for the court to find that the premises involved were being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the bill are true, the court shall order that no liquors shall be sold, bartered, given away, distributed, dispensed or stored in such house, building, clubroom or other place, nor in any part thereof, for a period of not to exceed one year in the discretion of the court from and after such finding, in case of a drug store; in other cases the order for abatement shall be perpetual.

Any person violating the terms of any injunction granted in proceedings hereunder shall be punished for contempt summarily by the court without the impaneling of any jury to try the same, by a fine of not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months, in the discretion of the court or judge thereof in vacation. In case decree is rendered in favor of the plaintiff in any action brought under the provisions of this section, the court entering the same shall also enter decree for a reasonable attorney's fee in such action in favor of the plaintiff against the defendants therein, which attorney's fee shall be taxed and collected as other costs therein, and when collected paid to the attorney, or attorneys, of the plaintiff therein.

Additional penalties.

SEC. 18. In addition to the penalties prescribed for violation of any of the provisions of sections two to sixteen, inclusive, of this act, the court may in its discretion, when such conviction is had, require the defendant to execute bond with good security to be approved by the court or clerk thereof, in the penalty of one thousand dollars, conditioned not to violate any of the provisions of any of said sections for the term of two years, and in default of such bond may commit the defendant to jail for said term of two years, unless such bond be sooner given.

Common carriers must keep record—Record legal evidence.

SEC. 19. All express companies, railroad companies and transportation companies within this state are hereby required to keep books in which shall be entered immediately upon receipt thereof the name of every person to whom liquors are shipped; the amount and kind received; the date when delivered, and by whom, and to whom delivered; after which record shall be a blank space, in which the consignee shall be required to sign his name in person to such record, which book shall be open to the inspection of any state, county or municipal officer of this state, at any time during business hours of the company; except that in the absence or sickness of a duly licensed druggist, having authority to sell pure grain alcohol and wine for the purposes prescribed by law, a registered pharmacist in the employ of such druggist, duly designated by such druggist, in writing personally signed by him, to the agent of the transportation company, may sign such druggist's name to the record of shipments of alcohol for medicinal, pharmaceutical, scientific and mechanical purposes or wine for sacramental purposes by religious bodies, such registered pharmacist being required to write immediately beneath such druggist's name his own name and his connection with such druggist. Such books shall constitute prima facie evidence of the facts therein stated, and be admissible as evidence in any court in this state having jurisdiction, or in any manner empowered with the enforcement of the provisions of this act. Any employee or agent of any express, railroad company or transportation company knowingly failing or refusing to comply with the provisions of this section, shall be guilty of a misdemeanor and punished by a fine of not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail not less than thirty days nor more than twelve months. *Provided, however,* that nothing herein contained shall permit, or be construed as permitting or authorizing, any common carrier or transportation company to bring or carry into this state, or carry from one place to another within the state, intoxicating liquors for another, even when intended for personal use, other than pure grain alcohol and wine, and such preparations for druggists as may be sold by them for special purposes in the manner set forth in sections four and twenty-four.

Citizens may employ attorneys.

SEC. 20. Any citizen or organization within this state may employ an attorney to assist the prosecuting attorney to perform his duties under this act, and such attorney shall be recognized by the prosecuting attorney and the court as associate counsel in the proceedings; and no prosecution shall be dismissed over the objection of such associate counsel until the reasons of such prosecuting attorney for such dismissal, together with the objections thereof of such associate counsel, shall have been filed in writing, argued by counsel and fully considered by the court.

Rewards offered, how.

SEC. 21. The prosecuting attorney of any county, with the approval of

the governor, or of the court of the county vested with authority to try criminal offenses, or of the judge thereof in vacation, may, within his discretion, offer rewards for the apprehension of persons charged with crime, or may expend money for the detection of crime. Any money expended under this section shall, when approved by the prosecuting attorney, be paid out of the county fund in the same manner as other county expenses are paid.

Right of appeal.

SEC. 22. In all cases arising under this statute the state shall have the right to appeal.

Deemed exercise of police power.

SEC. 23. This entire act shall be deemed an exercise of the police powers of the state for the protection of public health, peace, and morals, and all of its provisions shall be liberally construed for the attainment of that purpose.

Repeal.

SEC. 24. All acts and parts of acts, so far as in conflict with this act, are hereby repealed.

Corporation or agent personally liable.

SEC. 25. If any corporation or association shall violate any of the provisions of this act, any officer, agent, or employee thereof acting for it in any such unlawful act, or authorizing the same to be done, shall be personally guilty thereof the same as though such officer, agent, or employee himself had committed the offense, and shall be subject to all of the fines, penalties, and imprisonments therefor.

Penalties for public officers.

SEC. 26. If any state, county, district or municipal officer, or any municipal police, shall fail, refuse or neglect to discharge any duty imposed upon him by law, prohibiting the manufacture, sale, keeping and storing for sale of intoxicating liquors, he shall be removed from office in the manner provided in this section. Such removal shall be made by the district court of the county wherein such officer resides. The charges against any such officer shall be reduced to writing, and entered of record by the court, and a summons shall thereupon be issued by the clerk of such court, containing a copy of the charges, and requiring the officer named therein to appear and answer the same as in other civil actions, which summons may be served in the same manner as a summons in civil action, and the service must be made at least five days before the return day thereof. And the court itself shall, without a jury, hear the charges, and upon satisfactory proof thereof, remove any such officer from the discharge of the duties of his office, and place the records, papers and property of his office in the possession of some other officer or person for safekeeping until the vacancy is filled. Any vacancy created under this section shall be filled in the manner required by law as to county and district officers, and in the manner prescribed by the ordinances of the municipality. Any citizen of the county, district or municipality, as the case may be, or the commissioner of prohibition, may prefer and prosecute to final judgment charges for removal against any of the officers, including municipal police, mentioned in this section. The word "officer," as used herein, shall include and embrace municipal police. Either party shall have the right of appeal to the supreme court of the state from the judgment of the district court.

Change of venue, when.

SEC. 27. Whenever it shall appear to any district court before which is

pending any charge for an offense under this act, that the state cannot have a fair and impartial trial by jury in the county where such action is pending, the court shall enter an order to that effect, and shall order that such cause be transferred to some other district court in this state to be selected by the judge ordering such transfer; and the trial of such cause shall proceed before the court to which it is so transferred the same as is now provided in cases of change of venue.

Concurrent jurisdiction.

SEC. 28. Justices of the peace shall have concurrent jurisdiction with the district court for the trial of first offenses arising under this act; *provided*, that the district attorney or the commissioner, or any of his deputies, shall have the right before trial to elect whether the case shall be tried and judgment entered, or whether the justice shall hold a preliminary hearing to determine whether the accused shall be held to the district court; *provided, further*, that if the defendant shall plead guilty, the justice shall enter judgment on the charge. Justices of the peace shall not impose a fine greater than five hundred dollars nor imprisonment in the county jail longer than six months. The justice shall certify to the district attorney a transcript from his docket of the judgment in the case and a copy of all bonds given by the defendant. Whenever the district attorney shall appear for the state in any prosecution before a justice's court for an offense under this act, there shall be allowed and taxed as a part of the costs taxable against the defendant, an attorney's fee of ten dollars. The state shall have the same right as the defendant to an appeal from the judgment of the justice. Any transcript of a judgment, so certified by a justice of the peace, shall be admissible evidence upon the trial of the accused for a second offense under this act.

Witness, when immune.

SEC. 29. Any person called on behalf of the state to testify concerning any violations of this act, who shall give freely and truthfully any testimony tending in any way to incriminate himself, shall be immune from prosecution under this act.

Unlawful to receive from common carrier—Exception.

SEC. 30. It shall be unlawful for any person in this state to receive, directly or indirectly, intoxicating liquors from a common, or other carrier. It shall also be unlawful for any person in this state to possess intoxicating liquors, received directly or indirectly from a common, or other carrier in this state. This section shall apply to such liquors intended for personal use, as well as otherwise, and to interstate, as well as intrastate, shipments or carriage. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars nor more than one thousand dollars, and in addition thereto may be imprisoned in the county jail not more than twelve months; *provided, however*, that druggists may receive and possess pure grain alcohol, wine and such preparations as may be sold by druggists for the special purpose and in the manner as set forth in section four.

Section 1. The sentence "and all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of this act," in this section, cannot be adjudged out of the act, or restricted or enlarged in its plain signification, unless, after exhausting every legitimate method of construction, it is found irreconcilable with the scope and purpose of the act, or void for constitutional reasons. *State ex rel. Thatcher v. Reno Brewing Co.*, 42 Nev. 397, 398, 402-410 (178 P. 902, 905).

Section 1. "Sierra Beverage" containing malt and one-tenth per cent alcohol, is, whether

intoxicating or not, within this section providing that "all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of this act." Id.

Section 1. The phrase "any other intoxicating drink, mixture or preparation of like nature," which follows the specific enumeration of certain named liquors in this section, instead of limiting the class of liquor enumerated, described another merely by their intoxicating quality. Id.

Section 1. The phrase "any other intoxicating drink, mixture or preparation of like nature," which follows the specific enumeration of certain named liquors in this section, is not controlled or qualified by the last clause of said section with reference to beverages containing one-half per cent alcohol being spirituous liquors. Id.

This section, providing that "all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of this act," does not contravene the state or federal constitution. Id.

Section 6. See State ex rel. Thatcher v. Reno Brewing Co., 42 Nev. 397, 398, 402-410 (178 P. 902), under section 14 of this act.

Section 7. This section was intended to prevent a person from having intoxicating liquor upon the street for personal or any other use other than contemplated by the act itself. Ex Parte Zwissig, 42 Nev. 360, 362-366, 368 (178 P. 20-22).

Section 7. Under Rev. Laws, 4851, this section and section 28 of this act in a prosecution for violation of this act a justice cannot assess greater punishment than a fine of \$500 and six months' imprisonment in the county jail; the district court alone being authorized to impose the excess fine and imprisonment mentioned in this section. Id.

One charged with violation of this act could not complain of its unconstitutionality as providing the justice of the peace might assess a fine in excess of the limitation fixed by the general statute prescribing his jurisdiction, where the punishment fixed was actually within the limitation of the general statute. Id.

Section 7. This section held not violative of the guaranties of U. S. Const. Amend. 14, sec. 1, as to abridging privileges or immunities of citizens of the United States, due process and equal protection. Id.

Section 14. The term "intoxicating liquors," as used in this section, is, when said section is construed together with sections 6 and 17, to be taken as used interchangeably with the word "liquors" in section 1, and the district court had jurisdiction to enjoin defendant from manufacturing and selling "Sierra Beverage," although said beverage is not intoxicating. Id.

Section 17. See State ex rel. Thatcher v. Reno Brewing Co., 42 Nev. 397, 398, 402-410 (178 P. 902), under section 14 of this act.

Section 28. See Ex Parte Zwissig, 42 Nev. 360, 362-366, 368 (178 P. 20-22), under section 7 of this act.

Section 28. Where petitioner was arrested for violating the initiative prohibition act, and the district attorney elected to have the justice hold a preliminary hearing to bind over, on an original application for writ of habeas corpus to the supreme court, such court will not pass upon the objection that the proceedings were void as conferring upon the district court jurisdiction of a misdemeanor until a court without jurisdiction proceeds to exercise it, since until such time the question is moot. Ex Parte Ming, 42 Nev. 480 (181 P. 319, 320).

An Act prohibiting the sale, furnishing, giving away, or having in possession of any intoxicating drinks; defining the same; making the superintendent of the Nevada state police ex officio commissioner of prohibition and defining his duties; prescribing penalties for the violation of this act and providing for the enforcement of the same.

Approved April 1, 1919, 460

Unlawful to have in possession.

SECTION 1. From and after the passage and approval of this act it shall be unlawful for any person, firm or corporation to sell, furnish, give

away or have in possession any intoxicating drink or drinks, except as otherwise permitted by this act. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as for a misdemeanor; *provided*, that any person who shall be convicted of a violation of any of the provisions of this act a second time within the space of one year shall be punished by a fine of not more than one thousand dollars and by imprisonment in the county jail for not more than twelve months. The punishment last mentioned respecting second offenses shall not be less than a fine of five hundred dollars and imprisonment in the county jail for six months.

"Intoxicating drink" defined.

SEC. 2. The words "intoxicating drink" are intended to mean and shall be deemed to mean all malt, vinous or spirituous liquors, all wine, porter, ale, beer, all malted or brewed drinks, all liquids, mixtures and preparations which will produce intoxication and all beverages containing so much as one-half of one per centum of alcohol by volume; *provided*, that none of the foregoing is intended, nor shall any be deemed, to be included as an intoxicating drink unless it shall contain so much as one-half of one per centum of alcohol by volume and be capable of use as a beverage.

Druggist may sell—Restrictions.

SEC. 3. It shall be lawful for druggists to sell pure grain alcohol or any United States pharmacopœia or national formulary preparation in a manner conforming to laws now existing respecting such sale, and any specific liquids or solids when so sold shall be deemed to be intoxicating drinks whose sale is permitted; *provided*, that any substance the sale or possession of which requires a United States liquor dealer's tax or stamp is intended to be an intoxicating drink, whose sale is not permitted.

Toilet and culinary preparations excepted.

SEC. 4. It shall be lawful for druggists to sell perfumes, toilet waters and other toilet preparations, or extracts, condiments or other culinary preparations of like nature, and all of the foregoing enumerated substances may likewise lawfully be sold by grocers having a permanent place of business within the town or city in which the same shall be sold.

Druggists—Record.

SEC. 5. It shall be lawful for druggists to sell brandy or wine, such as is commonly used for beverage purposes, or medicines containing the same only according to the prescription of a duly licensed physician or surgeon residing in the county, which prescription shall state the name and address of the person for whom prescribed and the particular necessity for the same, and which shall further direct that the same shall be compounded or dispensed one time only and which prescription shall be numbered in the usual way, and shall bear also a serial number denoting the number of times substantially the same prescription has been issued to or for the same person. Said prescription shall in addition be dated, subscribed by the physician and sworn to be as true and correct in every particular before some person competent to administer an oath. No such prescription shall be prescribed or knowingly and wilfully be compounded or dispensed by any druggist for a greater quantity than one quart liquid measure, nor shall any physician prescribe for the same person more than once the same or similar liquors within any period of three months, unless with respect to time such physician shall further make oath that the condition of the person prescribed for is such that the liquors prescribed are absolutely necessary at the time. Wines for sacramental purposes may be obtained from druggists and druggists may sell the same to duly and

regularly ordained or practicing ministers of the gospel residing within the county of sale upon their written and signed statement that such wines are to be used for sacramental purposes. Physicians shall keep copies of originals and druggists shall keep copies of prescriptions for intoxicating drinks given or compounded pursuant to this act from their date for one year, and exhibit the same on demand to any peace officer. Druggists shall keep a record of all intoxicating drink or drinks bought and received or otherwise received from and after July 1, 1919, and they shall make a statement of the amount of such drink on hand on July 1, 1919, and annually thereafter. Such statement and record shall be kept from time to time as supplies are received and shall be open to the inspection of all peace officers at reasonable times of the day. Any violation of the provisions of this section shall be deemed a violation of this act. Any person may be punished also for any false oath or affidavit, according to existing laws.

What officers to act.

SEC. 6. The superintendent of the Nevada state police shall see that this act is obeyed and observed throughout the state, and shall be ex officio commissioner of prohibition. The peace officers of cities, towns and counties and the district attorneys of each county shall see that this act is obeyed and observed within the limits of their authority. City, town, county and state peace officers and district attorneys shall have the power to seize any intoxicating drink or drinks defined in this act when they are not excepted by permission from the operation hereof, which they may find in the possession of any one under circumstances giving reasonable ground for belief that this act has been or is being violated; *provided*, that they shall not break or enter into any place used as a place of abode or residence of any person and in other cases they shall first make oath before the nearest magistrate as to the facts within their knowledge and procure a warrant and authority for the search of the premises to be particularly described. Such warrant shall be issued without delay upon the oath of the superintendent of the Nevada state police or the district attorney of the county that he or either of them has reasonable ground to believe that this act is being violated and setting forth such facts as may be known to such officer.

Peace officers custodians.

SEC. 7. All intoxicating drink seized according to law shall be kept safely by the sheriff or constable in the town or county of the seizure and shall await the event of any prosecution commenced in connection with them, and the court or judge having jurisdiction shall order the destruction of the same by the sheriff or constable or their return to the place of seizure accordingly as it shall appear that the seizure was or was not warranted.

Nurses may administer prescriptions.

SEC. 8. Any possession of intoxicating drinks lawfully sold to the possessor shall be a lawful and permitted possession, but the same shall not be given away or furnished to another on any pretext whatsoever, except in the case of persons acting as nurses who are hereby permitted to furnish, give away or administer the same to the sick according to a physician's prescription.

Arrests, how made—District attorneys prosecute.

SEC. 9. Arrests may be made on warrants or otherwise as in other criminal cases and by officers and members of the Nevada state police according to the powers of the Nevada state police. All offenses shall be

bailable upon reasonable bail, but not less than the amount of the minimum fine which might be imposed for the offense charged shall be fixed as bail in any case.

District attorneys shall prosecute all charges diligently and on the request in writing filed with the papers of the case and signed by the commissioner of prohibition, shall receive the assistance of any attorney at law of Nevada who may offer assistance without charge or expense, and the court or judge having jurisdiction shall order the name of such attorney entered as an attorney of record on behalf of the state in such prosecution or proceeding. No prosecution or proceeding shall be dismissed if such attorney shall object, before an opportunity shall be afforded such attorney to be heard by the court or to file a statement in the papers of the case concerning the same.

Act, how cited.

SEC. 10. This act shall be cited as the Nevada prohibition act and in prosecutions under it a concise statement that the accused did violate the Nevada prohibition act, a first or second offense (as the case may be), by selling, furnishing, giving away or having in possession (as the case may be) intoxicating drink or drinks, and naming or describing the person or persons to whom the same were sold, furnished or given away (as the case may be), shall sufficiently describe the offense. The time and venue and other usual recitals shall also be given. A second offense shall be noted by appropriate words. It shall not be necessary to negative in the charge, information or indictment any matters of defense.

Repeal—Exception.

SEC. 11. All acts or parts of acts in conflict herewith are hereby repealed; *provided*, that it is not intended hereby to repeal or amend the initiative prohibition enactment which was submitted to the people, as question No. 1, at the last general election, and the same is not repealed or amended by this act.

LIENS

2213. Under this section it was held that one who furnished labor in developing a mine at the instance of the lessee was entitled to a lien on the property for his services, whether the lessee was a contractor working on the property in the interest of the owner, or whether, under the lease, the lessee and owner were both to share in the benefit of the lessee's work. *Lamb v. Lucky Boy M. Co.*, 37 Nev. 11 (138 P. 902).

This section provides for a lien whether the work is done or material furnished at the instance of the owner or his agent. Rev. Laws, 2221, provides that every building or other improvement constructed with the knowledge of the owner shall be held to have been constructed at his instance, and his interest shall be subject to lien, unless within three days after he shall have obtained knowledge of the construction he shall give notice that he will not be responsible, by posting notice in writing on the land or building. Alterations were made on a building, and the contractors for the work with the owner ordered lumber. After work had been commenced, the owners posted a notice of nonliability. Held, that such notice could not affect the lien under this section, since Rev. Laws, 2221, merely imposes an active duty upon the owner to repudiate liability for improvements made or materials furnished without his consent, and not to the case where the order is given by his agent. *Verdi Lumber Company v. Bartlett*, 40 Nev. 317, 320, 322-326 (161 P. 933).

2215. See *Riverside Fixture Company v. Quigley*, 35 Nev. 17, under section 2217.

2221. See *Riverside Fixture Company v. Quigley*, 35 Nev. 17, under section 2217.

The testimony of one claiming a mechanic's lien for work performed upon a building that he worked on the building, that at the time he looked for a notice signed by the owner that he would not be responsible for the repairs, and that there was no such notice at any time while he was doing the work, is not negative testimony such as may be disregarded in the face of positive testimony that the notice was posted. *Gaston v. Avensino*, 39 Nev. 128, 131 (154 P. 85).

Where the testimony of the plaintiff on the trial of an action to foreclose a mechanic's lien was positive that a notice disclaiming liability for the work done was not posted, and the defendant's testimony was equally positive that it was posted, there was such a conflict in the testimony that the determination of the lower court would not be disturbed. *Id.*

2217. Procedure to obtain lien—Immaterial error not to defeat.

SEC. 5. Every person claiming the benefit of this chapter shall, not earlier than ten days after the completion of his contract, or the delivery of material by him, or the performance of his labor, as the case may be, and not later than fifty days after such completion of his contract or the delivery of material or performance of labor by him, file for record with the county recorder of the county where the property or some part thereof is situated, a claim containing a statement of his demand after deducting all just credits and offsets, with the name of the owner or reputed owner if known, also the name of the person by whom he was employed or to whom he furnished the material, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien sufficient for identification, which claim must be verified by the oath of himself or some other person. Upon the trial of any action or suit to foreclose such lien no variance between the lien and the proof shall defeat the lien or be deemed material unless the same shall result from fraud or be made intentionally, or shall have misled the adverse party to his prejudice, but in all cases of immaterial variance the claim of lien may be amended, by amendment duly recorded, to conform to the proof. No error or mistake in the name of the owner or reputed owner contained in any claim of lien shall be held to defeat the lien, unless a correction of the lien in this particular shall prejudice the rights of an innocent bona-fide purchaser or encumbrancer for value. But upon the trial, if it shall appear that an error or mistake has been made in the name of the owner or reputed owner, or that the wrong person has been named as owner or reputed owner, in any such claim of lien, the court shall order an amended claim of lien to be recorded with the recorder where the original claim was recorded, and shall issue to the person who is so made to appear to be the original or reputed owner, a notice directing such person or persons to be and appear, within the same time as is provided by law for the appearance in other actions after the service of summons, and said notice shall be served in all respects as a summons is required to be served, before said court and to show cause why he should not be substituted in said claim of lien and in said suit in lieu of the person so made defendant and alleged to be owner or reputed owner by mistake, and to further show why he should not be bound by the judgment or decree of the court. And such proceedings shall be had therein as though the party so cited to appear had been an original party defendant in the action or suit, and originally named in the claim of lien as owner or reputed owner, and the rights of all parties shall thereupon be fully adjudicated. *As amended, Stats. 1917, 43.*

2217. This section provides that a lien claim shall recite the name of the owner or reputed owner, if known. Rev. Laws, 2215, provides that, if a person owns less than a fee simple estate, only his interest shall be subject to lien. Rev. Laws, 2221, provides that the interest of an owner of property, or one having an interest, may be subjected to a lien,

where a building or improvement was constructed with his knowledge. A lien claim recited "that the above-mentioned L. is the owner and reputed owner of said premises." The heirs of the former owner are minors, other than L. who assumes, not only to have an interest in the property, but to exercise control over the same. Held, the designation of such heir is sufficient to charge his interest for the entire lien. *Riverside Fixture Company v. Quigley*, 35 Nev. 17, 28 (126 P. 545).

The statute giving right of lien to both contractors and laborers, a lien claim against mining property is not void for joinder of a claim of lien under contract of employment by the day with one under contract of employment for a specified amount of work, at an agreed price per foot; the work being continuous and of the same character under both contracts. *Ferro v. Bargo Mining Company*, 37 Nev. 139, 144 (140 P. 527).

2221. Owner must post and file notices.

SEC. 9. Every building or other improvement mentioned in section 1 of this act, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein, and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this chapter, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration or repair, or the intended construction, alteration or repair, give notice that he will not be responsible for the same, by posting a notice in writing to that effect in some conspicuous place upon said land, or upon the building or other improvement situate thereon, and also shall, within five days after such posting, file a duplicate original of such posted notice with the recorder of the county where said land or building is situated, together with an affidavit attached thereto showing such posting of the original notice. Such filing shall be prima facie evidence of said posting. *As amended, Stats. 1917, 435.*

Under this section, a notice posted at the collar of a mine shaft, which the owner, when he entered into an agreement with the contractor, knew would necessarily be destroyed in preparing the shaft for mining operations, and which was so destroyed prior to the contractor's employment of the claimant; was not binding upon claimant, as a notice must be so posted as, under ordinary conditions, it will remain a reasonable length of time, though a written notice in lead pencil would be as good as any other notice. *Phillips v. Snowden Placer Co.*, 40 Nev. 67, 81 (160 P. 786).

See *Verdi Lumber Company v. Bartlett*, 40 Nev. 317, under section 2213.

2223. By this section labor liens are preferred claims, and entitled to be paid out of the proceeds of the sale of the property in advance of other classes of lien claimants. *Daly v. Lahontan Mines Company*, 39 Nev. 14, 15, 23, 28 (151 P. 514; 158 P. 285).

This section provides that whenever liens are asserted against any property, the court in the judgment must declare their rank, placing liens for labor first. *Rev. Laws, 2227*, provides that, at the time of filing a complaint and issuing the summons in a lien action, the plaintiff shall notify all persons claiming liens on the premises to exhibit proof of their liens to the court. A mechanic's lienor for labor failed to exhibit his lien in a prior lien suit. Held, that so far as the plaintiffs in such suit and those who did exhibit their liens were concerned, he had waived his right under the statute to priority as a labor lienor. *Id.*

2224. Under this section, a lien suit instituted by a labor lien claimant, in which others join, should have been consolidated with other and prior suits against the same defendant. *Daly v. Lahontan Mines Co.*, 39 Nev. 15, 28 (151 P. 514; 158 P. 285).

See *Daly v. Lahontan Mines Company*, 39 Nev. 14, under section 2223.

This section allows any number of lien claimants to join in the same action and the court

to consolidate separate actions; Rev. Laws, 2227, provides that such liens may be enforced in an action in any court of competent jurisdiction and applies to mechanics' liens proceedings in justice's court where the sum involved does not exceed \$300. Held, that the words "sum involved" mean the sum involved in the several liens embraced in the suit, and that a justice's court had no jurisdiction of an action to foreclose mechanics' liens, where the total amount of the liens exceeds \$300, notwithstanding each of the liens is for a less amount. *Phillips v. Snowden Placer Company*, 40 Nev. 66, 76 (160 P. 786).

2226. In view of this section, in an action brought to enforce a mechanic's lien, a personal judgment may be rendered against a person, personally liable, if the complaint contains all necessary facts constituting both grounds of relief, and all necessary allegations of an action in assumpsit. *State ex rel. Abel v. Breen*, 41 Nev. 516, 521 (173 P. 555).

In view of this section, a judgment may be rendered against one personally liable if the complaint contains all necessary facts constituting both kinds of relief, and all the necessary allegations of an action in assumpsit. *State v. Moran*, 42 Nev. 356 (176 P. 413).

2227. Under this section, where no proofs were offered of liens involved in another and subsequent lien suit, no request made for consolidation of suits, and no appeal taken from the order refusing a continuance to the other lien claimants for the presentation of proofs, there was a waiver in favor of the liens involved in the original suit. *Daly v. Lahontan Mines Company*, 39 Nev. 16, 28, 29 (151 P. 514; 158 P. 285).

See *Daly v. Lahontan Mines Company*, 39 Nev. 14, under section 2223.

Under this section, where lien claimants sued to enforce their lien, and gave proper notice to other claimants to exhibit their liens, and other claimants, who had an opportunity to exhibit their liens and had elected to institute a separate suit, appeared by attorney and stated that the other suit was pending for the foreclosure of their liens, and that at the proper time they would appear and join in the foreclosure, the court very properly refused the claimants a continuance. *Daly v. Lahontan Mines Company*, 39 Nev. 15-18, 23, 27-29 (151 P. 514; 158 P. 285).

See *Phillips v. Snowden Placer Company*, 40 Nev. 66, under section 2224.

2229. See *State ex rel. Abel v. Breen*, 41 Nev. 516, under section 2226.

An Act requiring bonds for the protection of subcontractors, laborers and material men on public buildings and structures; providing for the filing of such bonds and the giving and effect of certified copies thereof; creating a penalty for failure to exact such bonds; relating to actions thereon, to procedure in such actions, and allowing an attorney's fee to the prevailing party.

Approved March 26, 1913, 407

Contractor must give bond.

SECTION 1. That at the time of making any contract for the erection, construction, alteration or repair of any public building or structure, the contract price of which shall exceed the sum of five hundred (\$500) dollars, the party letting the contract shall exact from the contractor, and the contractor shall give to such party a good and sufficient bond, in an amount equal to at least twenty-five (25) per cent of the contract price, with at least two sureties, who shall qualify, in the aggregate, in an amount double the penal sum of said bond, and shall qualify in the form provided for the qualification of sureties upon court bonds, which bond shall be conditioned that the contractor shall well and truly pay, or cause to be paid, all just debts contracted by him for labor performed upon and materials furnished for the work provided to be done by said contract.

Bond to be filed.

SEC. 2. Said bond shall be filed and kept on file by the lawful custodian of said contract, and a copy of said bond, certified to be such by said lawful

custodian, shall be prima facie proof of the contents and due execution of said bond.

Surety company bond accepted.

SEC. 3. A bond given by any surety company, duly qualified to do business in the State of Nevada, shall be accepted as the equivalent of the bond required to be given by section 1 hereof.

Duplicate furnished, when.

SEC. 4. The custodian of said bond, shall, upon demand, furnish a duly certified copy of said bond to any applicant therefor, upon receiving a fee of fifty cents therefor.

Liability on failure to exact bond.

SEC. 5. If the party letting such contract shall fail to exact and take the bond herein provided for, or shall knowingly accept insufficient sureties thereon, such party, and the individual officers and agents thereof, by whom such contract was authorized, shall be jointly and severally liable to all who have performed labor upon and to all who have furnished materials for the work provided to be done by such contract, to an amount not exceeding twenty-five (25) per cent of the contract price, but wherever the party itself shall pay, upon default of the contractor, any liability hereby created, it shall have a right of action, jointly and severally, against the individual officers and agents thereof, by which said contract was authorized, and against their bondsmen, if any, for any amount or amounts so paid.

Bond, action upon.

SEC. 6. Any bond given hereunder shall be to the party letting said contract, and, upon default of the contractor, all who have performed labor upon, or furnished materials for, the work provided to be done by said contract, and their heirs, personal representatives, successors and assigns, shall have a right of action upon said bond, for the amount of their just debts for such labor and materials, and the court may allow a reasonable attorney's fee to the prevailing party in such action or actions.

Bond less than amount unpaid, procedure.

SEC. 7. When the unpaid demands for labor and materials are more than the amount of the bond, the court may, in rendering judgment, pro rate the amount of the bond among the several claimants. To this end the district court may consolidate all actions brought upon any such bond, and, when it is made to appear to such court, by affidavit, or otherwise, that the total liability, including costs and attorney's fees, on any such bond, will probably exceed the amount of said bond, the court may order that any action or actions pending in any justice's court, upon such bond, shall be certified to it, and thereupon, each such justice shall certify to such district court, all the pleadings and files in any such action upon such bond, and such certified actions shall be consolidated with the actions brought in the district court, and tried therewith, and any judgment, in any such certified action, shall carry costs and attorney's fees, irrespective of the amount in controversy.

Bond not invalid for defects.

SEC. 8. No bond given hereunder shall be invalid by reason of any defect of form, or of qualification of sureties, or for a failure of the sureties to qualify, and no such bond need be signed by the contractor.

Subcontractor not denied legal remedies.

SEC. 9. For all purposes of this act, and for the maintaining of any action or right thereunder, all who have performed labor for or furnished

materials to any subcontractor shall be deemed to have performed such labor, and to have furnished such material at the instance and request of the original contractor. But nothing herein contained shall be construed to deny to a subcontractor the rights and remedies created by this act; and, for the purposes of this act and all the rights and remedies created hereby, a subcontractor shall be deemed to have performed labor or furnished material, and to be included within those entitled to all rights and remedies hereunder. Where, however, actions are brought by a subcontractor, and also by all or any of his immediate laborers or material men, any judgment allowed the subcontractor shall be the amount he would otherwise be entitled to, less, however, the total of the demands sued upon by such immediate laborers and material men, of such subcontractor, and allowed.

Limitation of time.

SEC. 10. All actions brought upon any bond given hereunder shall be commenced within ninety days (90) after the completion and acceptance of the public building or structure upon which said bond was given, and no action so brought shall be tried, or any judgment rendered therein until the expiration of the said ninety (90) days. Any judgment obtained in any action brought under any provision of this act, shall be enforced in the same manner as judgments in other civil actions.

Words construed.

SEC. 11. The words "public buildings or structure," as herein used, are hereby declared to mean and to include every work or improvement, which, if done at the instance of an individual owner, would be subject to a mechanics' lien under the laws of the State of Nevada.

"Party" construed.

SEC. 12. The word "party," as herein used, is hereby declared to mean and to include the State of Nevada and every board and commission thereof; every county of the State of Nevada, and every board and commission thereof; every school district within the State of Nevada and every board and commission thereof; and ever municipality within the State of Nevada and every board, council and commission thereof.

An Act for the better protection of motor-vehicle dealers, garage keepers, and automobile repairmen, and giving them a lien on motor vehicles for supplies, accessories, repairs, and labor, and making it a misdemeanor to incur a bill on a motor vehicle without the consent of the owner.

Approved March 24, 1917, 402

Lien on motor vehicle.

SECTION 1. That any person or persons, company or corporation engaged in the business of buying or selling automobiles, keeping a garage or place for the storage, maintenance, keeping or repair of motor vehicles, and in connection therewith stores, maintains, keeps or repairs any motor vehicle, or furnishes accessories, or other supplies therefor, at the request or with the consent of the owner or its or his representatives, has a lien upon such motor vehicle or any part or parts thereof for the sum due for such storing, maintaining, keeping, or repairing of such motor vehicle, or for labor furnished thereon, or for furnishing accessories or other supplies therefor, and for all costs incurred in enforcing such lien, and may, without process of law, detain such motor vehicle at any time it is lawfully in his possession until such sum is paid.

Penalties.

SEC. 2. Any person or persons, company or corporation, acquiring a lien under the provision of section 1 of this act shall not lose such lien by

reason of allowing the motor vehicle, or part or parts of the motor vehicle, to be removed from control of the person or persons, company or corporations having such lien, and, in case a motor vehicle, or part or parts thereof, are so removed, the person or persons, company or corporation, having such lien may, without further process of law, seize the motor vehicle, or part or parts thereof, wherever the same is or are found within the State of Nevada.

Lien secondary, when.

SEC. 3. Any lien or liens so acquired shall be secondary liens or lien when the motor vehicle in question is sold or leased on a conditional sales agreement, or recorded lease or mortgage.

Validity, how settled.

SEC. 4. The validity of any such lien or liens shall be passed upon and determined by the judge of the court in which the case is tried.

Limitation of lien.

SEC. 5. Any liens so acquired shall expire by limitation within twenty days, unless suit is brought by the holder of said lien or liens to enforce same.

Same.

SEC. 6. In the case of bona-fide sale of a motor vehicle, all lien or liens so acquired shall terminate unless the holders of such lien or liens shall notify the purchaser of said vehicle within forty days from the date of sale.

Misdemeanor to incur bill, when.

SEC. 7. Any party or parties incurring a bill upon a motor vehicle without the authority of the owner of said motor vehicle or by misrepresentation shall be guilty of a misdemeanor.

Punishment.

SEC. 8. Punishment for such misdemeanor shall be a fine of not more than \$100, or thirty days in the county jail, or both, at the discretion of the court.

An Act to regulate the disposition of live stock in settlement of pasturage or feed bills.

Approved March 22, 1913, 258

Feed bill to be lien on live stock.

SECTION 1. Whenever the bill or claim for pasturage or feed for live stock shall in the judgment of the person or persons furnishing such pasturage or feed equal the value of the live stock pastured or fed and the owner or owners of such live stock shall have failed or neglected to pay for such pasturage or feed, the person or persons furnishing the pasturage or feed may have such live stock appraised by three competent and disinterested freeholders, and if such appraisement does not exceed by ten per cent the amount of the unpaid pasturage or feed bill, upon the filing of such appraisement with the county recorder of the county in which such live stock is situated, the title to such live stock shall vest in the person or persons furnishing such pasturage or feed, and he or they shall have the right to sell, subject to the right of redemption hereinafter mentioned, the said live stock.

Owner may redeem animals.

SEC. 2. At any time within one year after the filing of such appraisement the original owner or owners of such live stock shall have the right

to redeem such live stock from the possessor thereof by paying or tending as payment to such possessor the amount of such appraisement together with twenty-five per cent of such appraisement additional as damages, but should such payment or tender not be made by such original owner within one year after the filing of such appraisement, the title of the possessor of such live stock shall become absolute.

LIVE STOCK

2243. Similar brand prohibited.

SECTION 1. It shall be unlawful for any person or persons, firm, association, copartnership or corporation to have a brand and mark stock therewith, which brand is similar in form and design to, or a modification of, any brand or mark recorded prior thereto, in accordance with the laws now in effect regulating the recording of marks and brands of stock. *As amended, Stats. 1919, 391.*

2244. Unlawful to mark with similar brand.

SEC. 2. It shall be unlawful for any person or persons, firm, association, copartnership or corporation to mark and brand stock with a brand similar in form and design to, or a modification of, any prior recorded brand. *As amended, Stats. 1919, 392.*

An Act relating to and requiring the rerecording of brands upon live stock.

Approved March 25, 1915, 373

Marks and brands to be rerecorded.

SECTION 1. Every person, company, or corporation having horses, cattle, or other live stock and owning a brand or mark, or brands or marks, for the same, shall record such brand or brands, or mark or marks, with the county recorder on or before the first day of January, 1916, and again within sixty days prior to the first day of January, 1921, and repeatedly within sixty days prior to the first day of January at the end of each five-year period thereafter, such record to be made in the manner provided by existing laws for the recording of mark or brands.

Brands deemed abandoned, when.

SEC. 2. On and after the first day of January, 1916, no person, company, or corporation shall claim or own any brand or mark which has not been rerecorded in accordance with the provisions of this act, and any failure to rerecord a brand or mark as required by the provisions of this act shall be deemed an abandonment of the same, and any person, company, or corporation shall be at liberty to adopt and use any brand or mark so abandoned; *provided*, that no person, company, or corporation shall be at liberty to claim or use any such abandoned brand or mark until after he has caused the same to be recorded in his own name, under the provisions of this act; *and provided further*, that before such brand or mark may be claimed or used by such person, company, or corporation, the notice specified in the following section shall have been given.

Recorder to give notice of right.

SEC. 3. It shall be the duty of the county recorder to notify the owner of any recorded mark or brand, at least sixty days prior to the expiration of any time in this act provided for the rerecording of any mark or brand, of his right to rerecord the same. Such notice shall be given in writing, and

shall be addressed to such owner at the postoffice address named upon the books of said county recorder, and such notice shall be complete at the expiration of sixty days from the date of its mailing by said county recorder.

Notice to be published.

SEC. 4. It shall be the duty of the county recorder to publish in one newspaper in the county at least once a week for six consecutive weeks, and for seven consecutive weekly insertions, within sixty days prior to the expiration of any time in this act providing for the rerecording of any mark or brand, a notice of the expiration of the time fixed by this act for the rerecording of marks and brands and of the right of all persons owning any mark or brand to rerecord the same, which notice shall not exceed two hundred words.

Present law to govern.

SEC. 5. All rerecording of old brands or marks, and all recording of new brands or marks, shall be done and made in all respects in accordance with the provisions of existing laws for the recording of marks and brands.

Fees.

SEC. 6. For rerecording of any old brand or mark, the fee shall be the sum of fifty cents; for recording a new brand or mark, or any old brand or mark in the name of the new owner, the fee shall be as now allowed by law.

Bill of sale of brand.

SEC. 7. A bill of sale, duly witnessed, of any recorded mark or brand shall be prima facie evidence of ownership of such brand.

2285-6. Repealed, Stats. 1915, 149. Replaced by following act, Stats. 1915, 148:

An Act to provide for the appointment of inspectors of hides, defining their duties and mode of compensation, and repealing a certain act.

Approved March 15, 1915, 148

Inspectors appointed, when—Inspectors to search, when.

SECTION 1. It shall be the duty of any board of county commissioners of any county of this state, upon the application in writing of three or more property owners in any township of any county of the state, to appoint in and for said township and for such length of time as may be deemed necessary, not exceeding two years, an inspector of hides, whose duty it shall be to examine, when requested so to do by any three taxpayers of said township, the hides of any or all cattle killed in said township, and to mark such hide inspected in such a manner as may be indicated by the said board of county commissioners, and shall, upon the request of said taxpayers aforesaid, have the right, and it shall be his duty, to go upon the premises of any resident of such township and make search for any hides concealed, or which such inspector or said taxpayers may have reason to believe are concealed upon said premises, and shall report in writing, to the district attorney of the county in which he has been appointed, at such time as may be designated by the said board of county commissioners making the appointment, giving the number of hides inspected, the brands or other marks upon such hides, the names of the persons in whose possession they were found, and whether the persons having them in possession had killed the cattle from which the hides were taken, or had obtained them from other persons, and the names of such persons.

Pay of inspectors.

SEC. 2. The rate of compensation of such inspectors shall be fixed by the said board of county commissioners at the time the appointments are made, and shall be paid by the parties on whose petitions they are appointed, or by the taxpayers upon whose request they act, as provided in section one of this act.

Repeal.

SEC. 3. An act entitled "An act to amend an act entitled 'An act to provide for the appointment of inspectors of hides, defining their duties and mode of compensation,' approved March 3, 1881," approved March 10, 1897, is hereby repealed.

An Act to authorize any board of county commissioners to pass ordinances relating to certain animals running at large, making the violation thereof a misdemeanor, and fixing the punishment.

Approved March 26, 1915, 394

Preventing running at large.

SECTION 1. It shall be the duty of the board of county commissioners of any county in this state, when petitioned by 25 per cent of the taxpayers of any town or voting precinct, not maintaining a separate and independent local government, to pass an ordinance to prevent the running at large of any horse, mule, ass, kine, hog, sheep, or goat in said town or precinct; and providing in said ordinance for the impounding of the said animals as estrays and the payment of certain fees and costs before the release of such animals.

Ordinance shall be published.

SEC. 2. When said ordinance is properly drawn and signed by the chairman of the board of county commissioners it shall be published in some newspaper of general circulation published in said town or precinct, and if there be none, then in some newspaper published in the county for a period of at least ten days before going into effect. The cost of publication to be paid by the county out of the general fund of the county the same as other bills.

Penalty.

SEC. 3. A violation of any such ordinance shall be a misdemeanor, and punished by a fine of not less than \$5 nor more than \$100, or imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment.

An Act authorizing and empowering boards of county commissioners to pass ordinances to prohibit horses, cattle, swine, goats or sheep from running at large upon any portion of roads and highways of the State of Nevada, which are fenced on one side or both sides within certain districts.

Approved March 28, 1919, 290

May be prohibited from running at large.

SECTION 1. The boards of county commissioners of the respective counties of the state are hereby authorized, upon petition of twenty (20) per cent of the taxpayers residing in any district therein defined, to pass ordinances prohibiting horses, cattle, swine, goats or sheep from running at large upon any portion of the roads and highways within said district which are fenced on both sides.

Petition to county commissioners.

SEC. 2. Such petition may be presented at any regular or special meeting

of any board of county commissioners of this state, and shall define the boundaries of the district sought to be established, and shall pray that such district may be established, and that an ordinance may be passed by said board of county commissioners prohibiting any of the live stock mentioned in section one of this act from running at large therein.

Stock may be impounded.

SEC. 3. The said boards of county commissioners are hereby authorized and empowered to provide in such ordinance for the impounding and sale of any such live stock running at large within such district, and making a violation of any of the provisions of said ordinance a misdemeanor and punishable as such.

An Act to make unlawful the running at large of live stock upon the enclosed public roads or highways of certain counties, or the straying, feeding or picketing of live stock thereon; to provide for the disposal of such animals and for the punishment of violations of this act.

Approved March 26, 1913, 406

Applies to certain county only.

SECTION 1. It shall be unlawful for the owner, or any person having charge or control of any live stock of any kind, to permit or allow them to run at large, upon those public roads or highways of any county which at the last general election cast four hundred twenty-six (426) votes for representative in Congress, or which at any general election hereafter, shall cast four hundred twenty-six (426) votes for representatives in Congress or to allow the straying, feeding or picketing of live stock thereon; *provided*, that such public roads or highways are enclosed on one or both sides by a fence of any kind or description.

Duties of peace officers.

SEC. 2. It shall be the duty of the sheriff or his deputies, or of any constable or police officer within his baliwick, either upon his own initiative or upon the complaint of a private person, filed in a court of competent jurisdiction charging a misdemeanor as in this act provided, to seize and impound any and all animals running at large or straying, or feeding or being picketed, as in section 1 described, upon the above-described public roads or highways of said counties, and to immediately arrest the person charged with violating the provisions of this act.

Notice of impounding to be posted.

SEC. 3. The impounding officer shall forthwith post notice in three public places in the county to the effect that he has impounded the animals, describing them, and that if they are not redeemed, by the payment of the cost of feeding and keeping, and a five-dollar fee for each of said animals within ten days, by some one with authority so to do, they will be sold at the end of that time to the highest bidder. If no redemption is made, at the time specified, the officer shall sell the animals to the highest bidder, and after deducting the costs of feeding and keeping, and a fee of five dollars for his services for each animal, shall pay the balance to the owner or owners of the animals.

Penalties for violation.

SEC. 4. Any person violating the provisions of this act shall be guilty of a misdemeanor and be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than five days nor more than fifty days, or by both such fine and imprisonment.

An Act entitled an act to regulate the herding, grazing and driving of live stock.

Approved March 14, 1917, 124

Not to be herded near springs or home of another.

SECTION 1. It shall be unlawful for any person owning, or having charge of any live stock, to drive or herd or permit the same to be herded or driven, on the lands or possessory claims of other persons, or at any spring or springs, well or wells, belonging to another, to the damage thereof, or to herd the same or to permit them to be herded within one mile of a bona-fide home or a bona-fide ranch house; *provided*, that nothing in this act shall prevent the owners from herding or grazing their live stock on their own lands; *and further provided*, that nothing in this act shall be construed as to prevent live stock being driven along any public highway.

Violator liable for damages.

SEC. 2. The owner or agent of such owner of live stock violating the provisions of section 1 of this act, on complaint of the party injured, in any court of competent jurisdiction, shall be liable to the person injured for actual and exemplary damages.

An Act making it a misdemeanor to herd, graze, pasture, keep, maintain, or drive live stock upon, over, or across certain lands.

Approved March 22, 1915, 278

Trespass on water supply source prohibited.

SECTION 1. It shall be unlawful for any person, persons, firm, corporation, or association, owning or having charge of any live stock, to herd, graze, pasture, keep, maintain, or drive the same upon, over, or across any lands lying within one mile of any surface intake, intakes, water-boxes, or surface reservoirs, used for gathering, storing, and conducting water, when said lands are situated within the watershed of any stream, streams, springs, ponds, lakes, or reservoirs, waters from which, when so gathered and stored, are used for municipal, drinking, or domestic purposes by the residents and inhabitants of any city or town in the State of Nevada having a population of fifteen hundred or more people.

Not to apply to prospectors.

SEC. 2. Section 1 of this act shall not be construed to apply to prospectors or other persons passing over or being temporarily upon said lands with not to exceed ten head of live stock. Neither shall said section apply to live stock running at large upon the ranges.

Each trespass separate offense.

SEC. 3. That each and every day the said acts so declared to be unlawful in section 1 hereof are committed, done, and continued shall constitute and be separate, distinct, and new offenses, and any person violating any of the provisions of said section shall be guilty of a misdemeanor, and upon conviction shall, for each and every offense, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

2297. Repealed by implication by Stats. 1913, 118 (following act).

2336. Under this section, providing that live stock grazing on another's land shall be liable for damages, costs and attorney's fee, held, that a personal judgment for the attorney's fee cannot be rendered against the owner of the stock. *Jensen v. Pradere*, 39 Nev. 466, 469 (159 P. 54).

An Act relating to the destruction of wild horses and burros, requiring a permit therefor, and providing a penalty for the violation thereof.

Approved March 13, 1913, 118

Application—Bond.

SECTION 1. Any resident of the State of Nevada is hereby authorized, and it shall be lawful for said resident to kill any wild unbranded horse, mare, colt or burro of the age of twelve months or over found running at large on any of the public lands or ranges within the State of Nevada; *provided*, that the person desiring to kill horses, mares, colts or burros under the provisions of this act shall first file with the board of county commissioners of the county in which he desires to kill any such horses, mares, colts or burros a written application generally describing the range or public lands upon which he intends to kill said horses, mares, colts or burros. Said application shall remain on file at least two weeks before being acted upon by said board of county commissioners, and said board of county commissioners shall have the power to grant or refuse the application, and prescribe any conditions as the circumstances may warrant, and may, at any time, revoke the permit given under said application, and under the provisions of this act without assigning any reasons therefor; *and provided further*, that before the permission granted by said board of county commissioners shall become effective, the applicant shall file with and have approved by said board of county commissioners, a bond in the sum of \$2,000 with two sureties, said bond to be conditioned that said applicant will comply with the provisions of this act and be answerable in damages to the owner or owners of any branded horses which he kills contrary to the provisions of this act.

Permit necessary.

SEC. 2. It shall be unlawful for any person to kill, wound or maim any wild unbranded horses, mares, colts, or burros of the age of twelve months or over found running at large on any of the public land or ranges within the State of Nevada, without first having obtained a permit from the board of county commissioners as provided in section 1 of this act.

Unlawful to kill certain animals.

SEC. 3. It shall be unlawful for any person to kill, wound or maim any wild unbranded horse, mare, colt, or burro under the age of twelve months. And no permit granted by the board of county commissioners under the provisions of section 1 of this act shall include or give the right to any person to kill, wound or maim any wild unbranded horse, mare, colt, or burro under the age of twelve months.

Penalties for violation.

SEC. 4. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty dollars, nor more than five hundred dollars, or be confined in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

An Act relating to trespasses of live stock upon cultivated land, and specifying what shall constitute a legal fence for the purposes of this act.

Approved March 24, 1917, 415

No trespass on land not fenced.

SECTION 1. No person, firm or corporation shall be entitled to collect damages, and no court in this state shall award damages, for any trespass of live stock on cultivated land in this state if such land, at the time of such

trespass, shall not have been enclosed by a legal fence as hereinafter defined.

Legal fence defined.

SEC. 2. A legal fence is hereby defined for the purposes of this act as a fence with not less than three horizontal barriers, consisting of wires, boards, poles or other fence material in common use in the neighborhood, with posts set not more than twenty feet apart. The lower barrier shall be not more than sixteen inches from the ground and the space between any two barriers shall be not more than sixteen inches and the height of top barrier must be at least forty-eight inches above the ground. Every post shall be so set as to withstand a horizontal strain of two hundred and fifty pounds at a point four feet from the ground, and each barrier shall be capable of withstanding a horizontal strain of two hundred and fifty pounds at any point midway between the posts.

An Act to regulate the public service of stallions and jacks in Nevada.

Approved March 24, 1913, 289

Stallion registration board—Pedigree registered.

SECTION 1. Every person, firm, or company, standing or using for public service or offering for sale, any stallion or jack in this state, shall cause the name, description and pedigree of such stallion or jack to be enrolled by a stallion registration board, hereinafter provided for, and shall secure a license from said board as provided for in section 4 of this act. All enrollment and verification of pedigree shall be done by this board.

Duties of board.

SEC. 2. In order to carry out the provisions of this act there shall be constituted a stallion registration board, whose duty it shall be to verify and register pedigrees; to employ one or two graduate veterinarians to make examination of the stallion for soundness; to pass upon certificates of soundness; to issue stallion license certificates; to make all necessary rules and regulations; and to perform such other duties as may be necessary to carry out and enforce the provisions of this act.

Board, how composed.

SEC. 3. The stallion registration board shall be composed of the professor of veterinary science and the professor of veterinary science and the professor of animal husbandry at the University of Nevada shall be secretary and executive officer of the board.

How license secured.

SEC. 4. In order to secure this license certificate herein provided for, the owner shall apply for such to the stallion registration board, after the stallion or jack has been examined for soundness. The owner of such stallion or jack shall furnish to the stallion registration board the veterinary certificate, and the stud-book registry certificate of pedigree of the stallion or jack and all other necessary papers relating to his breeding and ownership. Upon verification of pedigree and breeding and certificate that the stallion or jack has passed the necessary veterinary inspection, as provided for in this act, a license certificate shall be furnished. The presence of one or more of the following-named diseases shall disqualify a stallion or jack from public service and are hereby defined as infectious, contagious, or transmissible diseases or unsoundness for this act: Cataract, amaurosis, laryngeal hemiplegia (roaring or whistling), chorea (St. Vitus dance, crampness, string-halt), glanders or farsey, maladie du coit, urethral gleet, mange, ringbone, bone spavin, sidebone, and curb when accompanied by a curby hock. The stallion registration board is hereby authorized to refuse

certificates of enrollment to any stallion or jack affected with any of these diseases specified and to revoke a previously issued license certificate of any stallion or jack found upon examination to be so affected.

Temporary licenses, when.

SEC. 5. The stallion registration board is authorized in case of emergency to grant temporary license certificates without veterinary examination, upon receipt of an affidavit of the owner to the effect that to the best of his knowledge and belief said stallion or jack is free from infectious, contagious, or transmissible disease or unsoundness. Temporary license certificates shall be valid only until veterinary examination can reasonably be made.

Imported stallion or jack.

SEC. 6. Every person, firm, or company, importing any stallion or jack into the State of Nevada, for breeding purposes or sale, shall first secure a certificate from a recognized state or federal veterinary office, certifying that said stallion or jack is free from any or all diseases or unsoundness referred to in section 4 of this act. A copy of the certificate must be mailed to the secretary of the stallion registration board at the University of Nevada, Reno, Nevada, at least five days before the importation of the stallion or jack into the state. No stallion or jack that is neither pure-bred nor grade according to the meaning of this act shall be imported into the state for breeding purposes.

License to be posted.

SEC. 7. The owner of any stallion or jack standing for public service in this state shall post and keep affixed during the entire breeding season copies of the license certificate of such stallion or jack in a conspicuous place both within and upon the outside of every stable, building or corral where the stallion or jack is used for public service at home or elsewhere.

Form of poster.

SEC. 8. Upon each bill and poster issued by the owner of any stallion or jack enrolled under this act, or used by him or his agent, for advertising such stallion or jack, the name of the animal shall be preceded by the words "pure-bred," "cross-bred," "grade," "nonstandard-bred," or "mongrel," or "scrub," in accordance with the wording of the certificate of enrollment; and it shall be illegal to print upon the poster any misleading reference to the breeding of the stallion or jack, his sire or his dam, or to use any portrait in a misleading way; and each newspaper advertisement printed to advertise any stallion or jack for public service shall show the enrollment certificate number and state whether it reads "pure-bred," "cross-bred," "grade," "nonstandard," or "mongrel," or "scrub."

Forms of certificates.

SEC. 9. The license certificate issued for a stallion or jack whose sire and dam are pure-bred and of the same breed and the pedigree of which is registered in a stud-book recognized by the United States department of agriculture, shall be in the following form:

Stallion Registration Board
License Certificate of Pure-Bred Stallion No.....

The pedigree of stallion (name)

Owned by

Described as follows:

Color..... Breed.....

Foaled in the year....., has been examined by the stallion registration

board of Nevada, and is hereby certified that the said stallion is of pure breeding and is registered in a stud-book recognized by the United States department of agriculture, Washington, D. C.

(Signature)....., secretary stallion registration board.

The license certificate issued for a stallion whose sire and dam are pure-bred, but of different breeds, shall be as follows:

Stallion Registration Board

License Certificate of Cross-Bred Stallion No.....

The pedigree of stallion (name)

Owned by

Described as follows:

Color..... Breed.....

Foaled in the year....., has been examined by the stallion registration board, and it is found that his sire is registered in....., and his dam in..... Such being the case, the said stallion is not eligible for registration in any stud-book recognized by the United States department of agriculture, Washington, D. C.

License certificate issued for a stallion whose sire or dam is not of pure breeding shall be in the following form:

Stallion Registration Board

License Certificate of Grade Stallion No.....

The pedigree of stallion (name)

Owned by

Described as follows:

Color..... Breed.....

Foaled in the year....., has been examined by the stallion registration board and it is found that the said stallion is not of pure breeding and is, therefore, not eligible for registration in any stud-book recognized by the United States department of agriculture, Washington, D. C.

License certificate issued for a stallion whose sire and dam are neither of them pure-bred shall be in the following form:

Stallion Registration Board

License Certificate for Mongrel or Scrub Stallion No.....

Name of the stallion

Owned by

Color..... Foaled in the year..... Has been examined by the stallion registration board and is found to be of mongrel breeding and is, therefore, not eligible to registry in any stud-book recognized by the United States department of agriculture, Washington, D. C.

(Signature)....., secretary stallion registration board.

Fees for registration.

SEC. 10. A fee of ten dollars (\$10) shall be paid the secretary of the stallion registration board for the veterinary examination and enrollment of each pedigree of the stallion as above provided. A fee not exceeding two dollars (\$2) shall be paid annually for the renewal of the pedigree certificate and service license. Stallions and jacks shall be examined every four years, until ten years of age, and after the first examination shall be exempt from examination at ten years of age and over.

License transferred with animals.

SEC. 11. Upon the transfer of ownership of any stallion or jack licensed under the provisions of this act, the license certificate may be transferred by the secretary of the board to the transferee upon the submittal of satisfactory proof of such transfer of ownership and upon the payment of one dollar (\$1).

Violation, how punished.

SEC. 12. Any person or persons knowingly or wilfully violating any of the provisions of this act shall be punished by a fine of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), or by imprisonment for not less than thirty days or more than six months, or by fine and imprisonment for each offense.

Disposal of accruing funds.

SEC. 13. The funds accruing from the above-named fees shall be used by the stallion registration board to defray the expenses of veterinary examination, of enrollment of pedigrees and issuance of licenses. Any funds not so used shall be used to publish reports or bulletins, containing lists of stallions examined; to encourage the horse- and mule-breeding interests of this state; to disseminate information pertaining to horse-breeding, and for any other such purposes as may be necessary to carry out the purposes and enforce the provisions of this act.

Annual report of board.

SEC. 14. It shall be the duty of this board to make annual report, including financial statement, to the governor of the state, and all financial records of said board shall be subject to inspection at any time by the public examiner.

Not to apply to certain animals.

SEC. 15. No part of this act shall apply to stallions turned upon the open range, and the term "standing for public service," is hereby defined as the service of a stallion for a fee when said stallion is stood at one or more places for public use, where in all more than five mares are served in one season.

Common carriers inhibited.

SEC. 16. No railroad company, transportation company or common carrier shall transport into the State of Nevada any stallion or jack unless accompanied by a state or federal veterinary certificate as provided in section 6 of this act. Violation of this provision shall be punished as provided in section 12 of this act.

Printing.

SEC. 17. The superintendent of state printing is hereby authorized and directed to furnish to the stallion registration board all blanks and other printing necessary in carrying out the provisions of this act.

Certain animals exempt.

SEC. 18. Stallions and jacks which have been in service in this state more than a year preceding the passage of this act shall not come under the provisions of this act until January 1, 1914.

An Act to provide for lien on mare and offspring for service of stallion, and to make it a misdemeanor to sell such mare or offspring without the written consent of the party holding the lien.

Approved March 22, 1913, 236

Concerning service of stallions.

SECTION 1. The owner or keeper of any stallion may advertise the terms upon which he will let such stallion to service, by publication thereof in some newspaper of the county where such stallion is kept, for sixty days during the season of each year, or by printed handbills conspicuously posted during such period in four or more public places in said county,

including the place where such stallion is kept; and the publication or posting, as aforesaid, of the terms of such service shall impart notice thereof to the owner of any mare served by such stallion during the season; and in all actions and controversies in respect to the foal, the owner of such mare so served shall be deemed to have accepted and assented to said terms when so advertised and published or posted as provided herein.

Lien on mare and foal, when.

SEC. 2. When the said terms of such service by any stallion, published or posted as provided in section 1 of this act, shall provide that the mare and foal will be held for the money due for the service of such stallion, then in that event the owner or keeper of such stallion, shall have a lien for such sum on the mare from the time of service and on the offspring of the mare served, for the period of one year after the birth of such foal, which said lien shall be preferred to any prior lien, encumbrance or mortgage whatever; and the publication or posting, as aforesaid, of the terms of such service shall be deemed notice to any third party of the existence of such lien.

Misdemeanor, when.

SEC. 3. Any person who shall sell, convey or dispose of any animal upon which there exists a lien, as created in section 2 of this act, without the written consent of the party holding such lien, and without informing the person to whom the same is sold or conveyed that said lien exists, or who shall injure or destroy such animal, or aid or abet the same, for the purpose of defrauding the lienor, or who shall remove or conceal, or aid or abet in removing or concealing such animal, with intent to hinder, delay or defraud such lienor, shall be deemed guilty of a misdemeanor.

An Act regulating the breeding of cattle on open ranges within the State of Nevada; defining a standard of breeding for bulls running upon the open range; fixing responsibility and providing a penalty for the violation of any provision of this act.

Approved March 7, 1917, 47

Number of bulls regulated.

SECTION 1. It is hereby made unlawful to turn loose, range, or run at large, any cattle where the same may have access to a domain or range common to other cattle, without keeping therewith, between the first day of June and the first day of November of each year, one bull for every thirty head or fraction thereof of female breeding cattle so ranged; *provided, however*, that any person ranging or running at large no greater number than fifteen head of female breeding cattle may jointly provide and arrange with another for an interest in a bull running at large on the open range where such female breeding cattle may range or run. For the purposes of this act, any heifer of the age of twelve months or over shall be considered a breeding cow.

Quality of bulls—Certificate to be filed.

SEC. 2. It is hereby made unlawful to turn loose or allow to run at large upon a domain or range common to other cattle, any bull other than such as may be at least three-quarter pure blood of some recognized beef breed of cattle. A three-quarter pure blood bull, as contemplated by this act, must be a bull having a registration certificate from the breed association of its respective breed, or one whose breeder has issued a certificate or made an affidavit under oath stating therein that the bull is at least three-quarter pure blood and stating the breed to which it belongs. Such certificate or affidavit shall be filed with the county recorder of the county

in which the owner of such bull or bulls resides; or if the owner thereof be a nonresident of this state, then such certificate or affidavit shall be recorded in the county or counties in which such bull or bulls are to be ranged; and the county recorder shall provide a book for the recordation of such certificate or affidavit. Such certificate or affidavit shall be filed with the county clerk, as herein provided, on or before the day on which any such bull or bulls are permitted to run at large.

Penalties for violation.

SEC. 3. The violation of any of the provisions of this act is hereby declared to be a misdemeanor; and any person or persons, firm, copartnership, or corporation violating any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. Any manager, superintendent, foreman, or herdsman, or any other person having charge or supervision over the cattle or live stock of any corporation doing business or ranging cattle within this state, who knowingly ranges or runs or permits to be ranged or run at large upon any range of this state the cattle of such corporation without first having complied with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment, or both, as herein provided.

MARRIAGE

2338. Cited, *Worthington v. District Court*, 37 Nev. 242 (142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696).

Under this section, and Rev. Laws, 2354-2357, it was held that, although alimony cannot be allowed if the marriage in fact be void, the district court had jurisdiction to award temporary alimony. *Poupart v. District Court*, 34 Nev. 336, 338 (123 P. 769).

2339. Similar sections (Stats. 1867, 88; 1891, 15) cited, *Worthington v. District Court*, 37 Nev. 221 (142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696).

2340. Similar section (Stats. 1899, 47) cited, *Worthington v. District Court*, 37 Nev. 221 (142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696).

2341. Marriage license, form of—County clerk to grant—Fee.

SEC. 5. Previous to persons being joined in marriage, a license shall be obtained for that purpose from the county clerk of the county where the persons, or one of them, intending to be married, reside (or in case the persons intending to be married do not reside in this state, then from any county clerk in the state). The county clerk may inquire of the party applying for marriage license upon oath or affirmation relative to the legality of such contemplated marriage; and if the clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license and if any of the persons intending to marry shall be under age and shall not have been previously married, the consent of the parent or guardian shall be personally given before the clerk, or certified under the hand of such parent or guardian, attested by two witnesses, one of whom shall appear before said clerk and make oath that he saw the parent or guardian, whose name is annexed to such certificate subscribed, or heard him or her acknowledge the same, whereupon the clerk is authorized to issue and sign such license, affixing thereto the seal of the county. The clerk

shall be entitled to receive as his fee for issuing the license the sum of one dollar, and if any clerk shall in any other manner issue or sign any marriage license he shall forfeit and pay a sum not exceeding one thousand dollars to and for the use of the party aggrieved. The clerk shall also at the time of issuing such license collect the sum of one dollar and pay the same over to the county recorder as his fee for recording the certificate named in section 8.

And said license shall be substantially in the following form:

MARRIAGE LICENSE

State of Nevada, }
County of } ss.

These presents are to authorize any licensed clergyman within this state, or any district judge or justice of the peace within his district, to join in marriage.....

....., of

in the county of....., State of.....

Previously married?..... Wife deceased?.....

Divorced?..... When?..... Where?.....

On what grounds?.....

And of

in the county of....., State of.....

Previously married?..... Husband deceased?.....

Divorced?..... When?..... Where?.....

On what grounds?.....

and to certify the same according to law.

Witness my hand and the seal of the district court of the

..... judicial district of the State of Nevada,

in and for the county of....., this..... day of.....,

A. D. 19....., Clerk.

(Seal), Deputy Clerk.

And it shall be the duty of the clerk, when issuing said license, to require the party applying therefor to answer under oath each of the questions contained in the said form of license, and if the party applying therefor cannot answer positively any questions with reference to the other party named in the license, it shall be the duty of the clerk to require both parties named in the license to appear before him and to answer, under oath, the questions contained in said form of license, and any person who shall make a false statement in procuring a marriage license with reference to any matter required by this section to be stated under oath shall be deemed guilty of a gross misdemeanor and punished by imprisonment in the county jail for a term of not more than one year, or by a fine not to exceed \$1,000, or by both such fine and imprisonment. *As amended, Stats. 1919, 382.*

Similar section (Stats. 1867, 88) cited, *Worthington v. District Court*, 37 Nev. 221 (142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696).

Similar section (Stats. 1899, 47) cited, *Worthington v. District Court*, 37 Nev. 221 (142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696).

2354. See *Poupart v. District Court*, 34 Nev. 336, under section 2338.

2355. See *Poupart v. District Court*, 34 Nev. 336, under section 2338.

2356. See *Poupart v. District Court*, 34 Nev. 336, under section 2338.

2357. See *Poupart v. District Court*, 34 Nev. 336, under section 2338.

MINES AND MINING

2377. Cited as Rev. Stats. U. S., sec. 2319. *Jim Butler Tonopah M. Co. v. West End Con. M. Co.*, 39 Nev. 396 (158 P. 876; 1 Am. Law. Rep. 405).

2380. Cited as Rev. Stats. U. S. sec. 2322, *Round Mountain M. Co. v. Round Mountain Sphinx M. Co.*, 36 Nev. 552 (138 P. 71).

As regards extralateral rights under Rev. Stats. U. S. 2322 (U. S. Comp. Stats. 1913, 4618), where a patented mining location is in the form of a parallelogram, except for the exclusion, for conflict, of a triangular piece at a corner, the remainder of what would have been the end-line but for such exclusion is the end-line; the interior line of the excluded triangle being one, or a part of one, of the side-lines, and not a part of a broken end-line. *Jim Butler Tonopah M. Co. v. West End Con. M. Co.*, 39 Nev. 375, 389, 398, 400 (158 P. 876; 1 Am. Law Rep. 405).

Rev. Stats. U. S. 2322, limiting extralateral rights to the part of a vein between vertical planes drawn downward through the end-lines, continued "in their own direction," does not negative extralateral rights in opposite directions; the end-lines having two directions. *Id.*

Within Rev. Stats. U. S. 2322, giving extralateral rights as to veins the tops or apexes of which are within the surface lines of the located claim, the crest of a vein in the form of anticlinal fold is the apex; a terminal ledge not being necessary for an apex. *Id.*

2383. Cited as Rev. Stats. U. S. 2325. *Round Mountain M. Co. v. Round Mountain Sphinx M. Co.*, 36 Nev. 553, 556 (138 P. 71).

Note to this section cited in *Round Mountain Mining Company v. Round Mountain Sphinx Mining Company*, 36 Nev. 555 (138 P. 71).

2384. Cited, *Indiana Nevada Mining Company v. Gold Hills Mining and Milling Company*, 35 Nev. 162 (126 P. 965).

Cited as Rev. Stats. U. S. 2326, *Indiana-Nevada M. Co. v. Gold Hills M. & M. Co.*, 35 Nev. 162 (126 P. 965).

Cited as Rev. Stats. U. S. 2326, *Round Mountain M. Co. v. Round Mountain Sphinx M. Co.*, 36 Nev. 553 (138 P. 71).

Cited as Rev. Stats. U. S. 2326, *Gamble v. Silver Peak G. M. Co.*, 35 Nev. 358 (133 P. 936).

2401. Cited as Rev. Stats. U. S. 2339, *Sheehan v. Kasper*, 41 Nev. 33 (165 P. 632).

2421. Note to this section cited in *Round Mountain Mining Company v. Round Mountain Sphinx Mining Company*, 36 Nev. 557 (138 P. 71).

Rules 38, 130, and 153 of the regulations cited in the same book and page.

2422. Who may locate—Form and posting of notice.

SECTION 1. Any person who is a citizen of the United States, or who has declared his intention to become such, who discovers a vein or lode, may locate lode mining claim thereon by defining the boundaries of the claim in the manner and within the time hereinafter prescribed, and by erecting or constructing at the point of such discovery a monument of the size and character of any of the several monuments prescribed in section 2 of this act and by posting in or upon such discovery monument a notice of such location, which must contain:

First—The name of the claim;

Second—The name of the locator or locators;

Third—The date of the location;

Fourth—The number of linear feet claimed in the length along the course of the vein, each way from the point of discovery, with the width claimed on each side of the center of the vein and the general course of the lode or vein, as near as may be. *As amended, Stats. 1919, 386.*

Under similar section (Cutting, 208) it was held that a notice of location of a mining

claim is not required to be recorded under the statutes of this state. *Gibson v. Hjul*, 32 Nev. 370 (108 P. 759).

A mining claim location which is invalid under Act. Cong. May 10, 1872, secs. 2, 5 (U.S. Comp. St. 1916, secs. 4615, 4620), is also invalid under this section. *Nelson v. Smith*, 42 Nev. 302, 311 (176 P. 263).

2456. It was held, under this section and Rev. Laws, 2458, that the use of land as a place to deposit tailings from an ore mill is a public use and land may be condemned therefor. *Goldfield Con. M. & T. Co. v. Old Sandstorm Co.*, 38 Nev. 427, 436 (150 P. 313).

2457. Cited, *Southern Development Co. v. Endersen*, 200 F. 284, 286.

Former act (Stats. 1883, 103) cited, *Southern Development Co. v. Endersen*, 200 F. 284.

2458. See *Goldfield Con. M. & T. Co. v. Old Sandstorm A. G. M. Co.*, 38 Nev. 427, under section 2456.

MONEY AND INTEREST

2499. Legal interest rate.

SEC. 4. When there is no express contract in writing fixing a different rate of interest, interest shall be allowed at the rate of seven per cent per annum upon all money from the time it becomes due, in the following cases:

(a) Upon contracts, express or implied, other than book accounts.

(b) Upon the settlement of book or store accounts from the day on which the balance is ascertained.

(c) Upon judgments rendered by a court in this state.

(d) Upon money received to the use and benefit of another and detained without his consent.

(e) Upon wages or salary, if the same shall be unpaid when due, after demand therefor has been made. *As amended, Stats. 1917, 351.*

In an action upon an open account for attorney's fees, plaintiffs cannot recover interest prior to judgment as provided by this section. *Thompson v. Tonopah Lumber Company*, 37 Nev. 184, 191 (141 P. 69).

2500. Limitation on agreed interest rate.

SEC. 5. Parties may agree, for the payment of any rate of interest on money due, or to become due, on any contract, not exceeding, however, the rate of twelve per cent (12%) per annum. Any judgment rendered on any such contract shall conform thereto, and shall bear the interest agreed upon by the parties, and which shall be specified in the judgment; *provided*, only the amount of the original claim or demand shall draw interest after judgment. Any agreement for a greater rate of interest than herein specified, shall be null and void and of no effect as to such excessive rate of interest. *As amended, Stats. 1913, 31.*

MOTHERS' PENSIONS

An Act to provide for the partial support of mothers who are dependent upon their own efforts for the maintenance of their children, and giving county commissioners of the State of Nevada jurisdiction in such matters, and prescribing penalties for those who fraudulently obtain the benefit thereof.

Approved March 15, 1915, 151

To receive county help.

SECTION 1. It shall be the duty of the county commissioners of each county in this state, and they are hereby empowered and authorized, to provide funds in an amount sufficient to meet the purposes and requirements of this law, for the support of women whose husbands are dead or are inmates of a penal institution or an insane asylum, or who are abandoned by their husbands, and such abandonment has continued for more than one year, or because of the total disability of their husbands, and who are unable to support their children, when such women are destitute or are dependent upon their own efforts for the maintenance of their children and are mothers of children under the age of fifteen years, and such mothers and children reside in such counties in the state.

Allowance limited.

SEC. 2. The allowance to each of such mothers shall not exceed the sum of twenty-five dollars per month when she has but one child under the age of fifteen years, and if she has more than one child under the age of fifteen years, it shall not exceed the sum of twenty-five dollars a month for the first child and fifteen dollars a month for each of the other children under the age of fifteen years, but in no case shall the entire allowance for mother and children be more than fifty-five dollars per month. *As amended, Stats. 1917, 13.*

Conditions of allowance.

SEC. 3. Such allowance shall be made and fixed by the board of county commissioners for their respective counties upon the following conditions:

First—The child or children for whose benefit the allowance is made must be living with the mother of such child or children.

Second—When by means of such allowance the mother will be able to maintain a home for her child or children.

Third—The mother must, in the judgment of the board of county commissioners, be a proper person, morally, physically, and mentally, for the bringing up of her children.

Fourth—No person shall receive the benefit of this act who shall not have been a resident of the county in which such application is made for at least one year next before the making of such application for such allowance.

Cessation of allowance.

SEC. 4. Whenever any child shall reach the age of fifteen years, any allowance made to the mother of such child, for the benefit of such child, shall cease. The board of county commissioners may, in their discretion, at any time before such child reaches the age of fifteen years, discontinue or modify the allowance to any mother or for any child.

Fraud punished.

SEC. 5. Any person procuring fraudulently any allowance for a person not entitled thereto shall be deemed guilty of a gross misdemeanor.

Order recorded.

SEC. 6. In each case where an allowance is made to any woman under the provisions of this act, an order to that effect shall be entered upon the records of the board of county commissioners making such allowance. Proceedings to obtain the benefits of this act shall be instituted by the applicant for allowance by filing an application before the board of county commissioners, same being properly verified under oath.

Appeal, when.

SEC. 7. In each case where an allowance is made or refused to any mother under the provisions of this act by the board of county commissioners, an appeal may be taken to the district court from such decision, by the applicant or by any taxpaying citizen, and such appeal shall be subject to the rules of procedure as in the case of appeals from the justice court.

Duties of district attorney.

SEC. 8. The district attorney shall render all necessary assistance to applicants under this act, and shall appear in every such proceeding, and shall carefully investigate the merits of every application, to the end that this act may be fairly administered and no person granted relief hereunder except those justly entitled thereto; and no officer of the court or county officer shall receive any fees for services rendered in carrying out the provisions of this act. A certified copy of said order shall be filed with the county auditor of the county in which such child's mother is resident, and thereupon, and thereafter, and so long as such order remains in force and unmodified, it shall be the duty of the county auditor each month to draw on the general fund of the county in favor of the mother for the amount specified in such order, which warrant shall be by the auditor delivered to the mother upon her executing duplicate receipts therefor, one to be retained by the auditor, and the other to be filed by the clerk with the records in the proceeding relating to such child or children. It shall be the duty of the county treasurer, and he is hereby authorized and empowered, to pay such warrant out of the general funds of the county.

NATURALIZATION

FEDERAL NATURALIZATION LAWS

2506. Sec. 2166. This section repealed by act of May 9, 1918 (Pub. No. 144, 65th Cong.), except as to honorably discharged soldiers who served in U. S. armies prior to January 1, 1900.

2508. Sec. 2171. R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1334. This section repealed by the act of May 9, 1918 (Pub. No. 144, 65th Cong.).

2509. Sec. 2174. R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1334. This section repealed by the act of May 9, 1918 (Pub. No. 144, 65th Cong.).

Act of June 29, 1906 (34 Stat. L., Part 1, p. 596), as amended in sections 16, 17, and 19 by the act of Congress approved March 4, 1909 (35 Stat. L., Part 1, p. 1102); in section 13 by the act of Congress approved June 25, 1910 (36 Stat. L., Part 1, p. 830); by the act of Congress approved March 4, 1913 (37 Stat. L., Part 1, p. 736), creating the Department of Labor; and by the act of Congress approved May 9, 1918 (Public, No. 144, 65th Cong., 2d sess.).

An Act to provide for a uniform rule for the naturalization of aliens throughout the United States, and establishing the Bureau of Naturalization.

[Portion of act creating the Department of Labor]

2514. Department of Labor created.

Be it enacted, That there is hereby created an executive department in the Government to be called the Department of Labor, with a Secretary of Labor, who shall be the head thereof, to be appointed by the President, by and with the advice and consent of the Senate; * * *

* * * * *

SEC. 3. That the following-named offices, bureaus, divisions, and branches of the public service now and heretofore under the jurisdiction of the Department of Commerce and Labor, and all that pertains to the same, known as * * * the Bureau of Immigration and Naturalization, * * * the Division of Naturalization, * * * be, and the same hereby are, transferred from the Department of Commerce and Labor to the Department of Labor, and the same shall hereafter remain under the jurisdiction and supervision of the last-named department. The Bureau of Immigration and Naturalization is hereby divided into two bureaus, to be known hereafter as the Bureau of Immigration and the Bureau of Naturalization, and the titles Chief Division of Naturalization and Assistant Chief shall be Commissioner of Naturalization and Deputy Commissioner of Naturalization. The Commissioner of Naturalization or, in his absence, the Deputy Commissioner of Naturalization, shall be the administrative officer in charge of the Bureau of Naturalization and of the administration of the naturalization laws under the immediate direction of the Secretary of Labor, to whom he shall report directly upon all naturalization matters annually and as otherwise required, * * *.

[Act of June 29, 1906, as amended by the acts above referred to]

That the Bureau of Naturalization, under the direction and control of the Secretary of Labor, shall have charge of all matters concerning the naturalization of aliens. That it shall be the duty of the Bureau of Immigration to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this act of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

2515.

SEC. 2. [This section is omitted, as it authorized the Secretary of Commerce and Labor to provide the necessary offices in the city of Washington and take the necessary steps for the proper discharge of the duties imposed by the act of June 29, 1906.]

2516. Courts having jurisdiction to naturalize.

SEC. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by Congress in any State, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska,

the supreme court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

That the naturalization jurisdiction of all courts herein specified—State, Territorial, and Federal—shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said bureau.

2517. Procedure.

SEC. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States and the present place of residence in the United States of said alien: *Provided, however,* That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided,* That if he has filed his declaration before the passage of this act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his

petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or the District of Columbia, in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Labor, if the petitioner arrives in the United States after the passage of this act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and adjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisite, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provision of this act, be naturalized without making any declaration of intention.

Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United

States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, either the Regular or the Volunteer Forces, or the National Army, the National Guard or Naval Militia of any State, Territory, or the District of Columbia, or the State militia in Federal service, or in the United States Navy or Marine Corps, or in the United States Coast Guard, or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention, petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance with the requirements of this subdivision it is shown that such residence can not be established; any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; any alien declarant who has served in the United States Army or Navy, or the Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, by two witnesses, citizens of the United States, and in these cases only residence in the Philippine Islands and the Panama Canal Zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for purposes of naturalization; and any alien, or any person owing permanent allegiance to the United States embraced within this subdivision, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding the limitation upon the jurisdiction of the courts specified in section three of the act of June twenty-ninth, nineteen hundred and six, provided he appears with his two witnesses before the appropriate representative of the Bureau of Naturalization and passes the preliminary examination hereby required before filing his petition for naturalization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of the Government from the Bureau of Naturalization and made a part of the record at the original and any subsequent hearings; and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the masters of said vessels, shall be deemed prima facie evidence to satisfy all of the requirements of residence within the United States and within the State, Territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States,

identifying the applicant as the person named in the certificate or honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed; and any petition for naturalization filed under the provisions of this subdivision may be heard immediately, notwithstanding the law prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court. Any alien who, at the time of the passage of this act, is in the military service of the United States, who may not be within the jurisdiction of any court authorized to naturalize aliens, may file his petition for naturalization without appearing in person in the office of the clerk of the court and shall not be required to take the prescribed oath of allegiance in open court. The petition shall be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall prove in their affidavits the portion of the residence that they have personally known the applicant to have resided within the United States. The time of military service may be established by the affidavits of at least two other citizens of the United States, which together with the oath of allegiance, may be taken in accordance with the terms of section seventeen hundred and fifty of the Revised Statutes of the United States after notice from and under regulations of the Bureau of Naturalization. Such affidavits and oath of allegiance shall be admitted in evidence in any original or appellate naturalization proceeding without proof of the genuineness of the seal or signature or of the official character of the officer before whom the affidavits and oath of allegiance were taken, and shall be filed by the representative of the Government from the Bureau of Naturalization at the hearing as provided by section eleven of the act of June twenty-ninth, nineteen hundred and six. Members of the Naturalization Bureau and Service may be designated by the Secretary of Labor to administer oaths relating to the administration of the naturalization law; and the requirement of section ten of notice to take depositions to the United States attorneys is repealed, and the duty they perform under section fifteen of the act of June twenty-ninth, nineteen hundred and six (Thirty-fourth Statutes at Large, part one, page five hundred and ninety-six), may also be performed by the Commissioner or Deputy Commissioner of Naturalization: *Provided*, That it shall not be lawful to make a declaration of intention before the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court: *Provided, further*, That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry.

During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military service of the United States for filing his petition or issuing the certificate of naturalization upon admission to citizenship, and no clerk of any State court shall charge or collect any fee for this service unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A full accounting for all of these transactions shall be made to the Bureau of Naturalization in the manner provided by section thirteen of the act of June twenty-ninth, nineteen hundred and six.

Eighth. That every seaman, being an alien, shall, after his declaration

of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen: *Provided*, That nothing contained in this act shall be taken or construed to repeal or modify any portion of the act approved March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, part one, page eleven hundred and sixty-four, chapter one hundred and fifty-three), being an act to promote the welfare of American seamen.

Ninth. That for the purpose of carrying on the work of the Bureau of Naturalization of sending the names of the candidates for citizenship to the public schools and otherwise promoting instruction and training in citizenship responsibilities of applicants for naturalization, as provided in this subdivision, authority is hereby given for the reimbursement of the printing and binding appropriation of the Department of Labor upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Bureau of Naturalization for the cost of publishing the citizenship text-book prepared and to be distributed by the Bureau of Naturalization to those candidates for citizenship only who are in attendance upon the public schools, such reimbursement to be made upon statements by the Commissioner of Naturalization of books actually delivered to such student candidates for citizenship, and a monthly naturalization bulletin, and in this duty to secure the aid of and cooperate with the official State and national organizations, including those concerned with vocational education and including personal services in the District of Columbia, and to aid the local Army exemption boards and cooperate with the War Department in locating declarants subject to the Army draft and expenses incidental thereto.

Tenth. That any person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July first, nineteen hundred and fourteen, and was on that date otherwise qualified to become a citizen of the United States, except that he had not made the declaration of intention required by law, and who during or prior to that time, because of misinformation regarding his citizenship status, erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention required of other aliens, and upon satisfactory proof to the court that he has so acted may be admitted as a citizen of the United States upon complying in all respects with the other requirements of the naturalization law.

Eleventh. No alien who is a native, citizen, subject, or denizen of any country, State, or sovereignty with which the United States is at war shall be admitted to become a citizen of the United States unless he made his declaration of intention not less than two nor more than seven years prior to the existence of the state of war, or was at that time entitled to become a citizen of the United States, without making a declaration of intention, or unless his petition for naturalization shall then be pending and is otherwise entitled to admission, notwithstanding he shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject: *Provided*, That no alien embraced within this subdivision shall have his petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Commissioner or

Deputy Commissioner of Naturalization to be present, and the petition shall be given no final hearing except in open court and after such notice to the representative of the Government from the Bureau of Naturalization, whose objection shall cause the petition to be continued from time to time for so long as the Government may require: *Provided, however*, That nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien; and section twenty-one hundred and seventy-one of the Revised Statutes of the United States is hereby repealed: *Provided further*, That the President of the United States may, in his discretion, upon investigation and report by the Department of Justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon he shall have the privilege of applying for naturalization; and for the purposes of carrying into effect the provisions of this section, including personal services in the District of Columbia, the sum of \$400,000 is hereby appropriated, to be available until June thirtieth, nineteen hundred and nineteen, including travel expenses for members of the Bureau of Naturalization and its field service only, and the provisions of section thirty-six hundred and seventy-nine of the Revised Statutes shall not be applicable in any way to this appropriation.

Twelfth. That any person who, while a citizen of the United States and during the existing war in Europe, entered the military or naval service of any country at war with a country with which the United States is now at war, who shall be deemed to have lost his citizenship by reason of any oath or obligation taken by him for the purpose of entering such service, may resume his citizenship by taking the oath of allegiance to the United States prescribed by the naturalization law and regulations, and such oath may be taken before any court of the United States or of any State authorized by law to naturalize aliens or before any consul of the United States, and certified copies thereof shall be sent by such court or consul to the Department of State and the Bureau of Naturalization, and the act (Public fifty-five, Sixty-fifth Congress, approved October fifth, nineteen hundred and seventeen), is hereby repealed.

Thirteenth. That any person who is serving in the military or naval forces of the United States at the termination of the existing war, and any person who before the termination of the existing war may have been honorably discharged from the military or naval services of the United States on account of disability incurred in line of duty, shall, if he applies to the proper court for admission as a citizen of the United States, be relieved from the necessity of proving that immediately preceding the date of his application he has resided continuously within the United States the time required by law of other aliens, or within the State, Territory, or the District of Columbia for the year immediately preceding the date of his petition for naturalization, but his petition for naturalization shall be supported by the affidavits of two credible witnesses, citizens of the United States, identifying the petitioner as the person named in the certificate of honorable discharge, which said certificate may be accepted as evidence of good moral character required by law, and he shall comply with the other requirements of the naturalization law.

2523. Proof by depositions, when permitted.

SEC. 10. That in case the petitioner has not resided in the State, Territory, or the District of Columbia for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the State, provided that it has been for more than one year, and the

remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Naturalization.

2525. Duties of clerks of courts.

SEC. 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this act to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said bureau.

In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Naturalization, and shall account for the same to the said bureau whenever required so to do by such bureau. No certificate of citizenship received by any such clerk which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the said bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

2526. Fees, disposal of.

SEC. 13. That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Naturalization, and paid over to such bureau within thirty days from the close of each

quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the Department of Labor, who shall thereupon deposit them in the Treasury of the United States, rendering an account therefor quarterly to the Auditor for the State and Other Departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpoenaing and paying the legal fees of any witnesses for whom he may request a subpoena, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner: *Provided*, That the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said bureau as in case of other fees to which the United States may be entitled under the provisions of this act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this act upon the clerks of courts from fees received by such clerks in naturalization proceedings.

And in case the clerk of any court exercising naturalization jurisdiction collects fees in excess of the sum of six thousand dollars in any fiscal year the Secretary of Labor may allow salaries, for naturalization purposes only, to pay for clerical assistance, to be selected and employed by that clerk, additional to the clerical force, for which clerks of courts are required by this section to pay from fees received by such clerks in naturalization proceedings, if in the opinion of said Secretary the naturalization business of such clerk warrants further additional assistance: *Provided*, That in no event shall the whole amount allowed the clerk of a court and his assistants exceed the one-half of the gross receipts of the office of said clerk from naturalization fees during such fiscal year: *Provided further*, That when, at the close of any fiscal year, the business of such clerk of court indicates in the opinion of the Secretary of Labor that the naturalization fees for the succeeding fiscal year will exceed six thousand dollars the Secretary of Labor may authorize the continuance of the allowance of salaries for the additional clerical assistance herein provided for and employed on the last day of the fiscal year, until such time as the remittances indicate in the opinion of said Secretary that the fees for the then current fiscal year will not be sufficient to allow the additional clerical assistance authorized by this act.

That payment for the additional clerical assistance herein authorized shall be in the manner and under such regulations as the Secretary of Labor may prescribe.

2528. Proceedings to set aside naturalization.

SEC. 15. That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground

that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered *prima facie* evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

SEC. 16. [Superseded by act of Mar. 4, 1909. See sec. 74, post.]

SEC. 17. [Superseded by act of Mar. 4, 1909. See sec. 75, post.]

SEC. 19. [Superseded by act of Mar. 4, 1909. See sec. 77, post.]

2541. Rules, power to make—Copies as evidence.

SEC. 28. That the Secretary of Labor shall have power to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this act. Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this act shall be admitted in evidence equally with the originals in any and all proceedings under this act and in all cases in which the originals thereof might be admissible as evidence.

**Validating Certain Certificates of Naturalization where Declarations Were Filed
Prior to September 27, 1906**

[Act of May 9, 1918]

SEC. 3. That all certificates of naturalization granted by courts of competent jurisdiction prior to December thirty-first, nineteen hundred and eighteen, upon petitions for naturalization filed prior to January thirty-first, nineteen hundred and eighteen, upon declarations of intention filed prior to September twenty-seventh, nineteen hundred and six, are hereby declared to be valid in so far as the declaration of intention is concerned, but shall not be by this act further validated or legalized.

An Act to codify, revise, and amend the penal laws of the United States.

[Act of March 4, 1909]

[The following sections repealed secs. 16, 17, and 19 of the act of June 29, 1906]

Penalty for counterfeiting certificate.

SEC. 74. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall knowingly aid or assist in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

Idem.

SEC. 75. Whoever shall engrave, or cause or procure to be engraved, or assist in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship; or whoever shall sell any such plate, or shall bring into the United States from any foreign place any such plate, except under the direction of the Secretary of Labor or other proper officer; or whoever shall have in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use or to suffer such plate to be used in forging or counterfeiting any such certificate or any part thereof; or whoever shall print, photograph, or in any manner cause to be printed, photographed, made, or executed any print or impression in the likeness of any such certificate, or any part thereof; or whoever shall sell any such certificate, or shall bring the same into the United States from any foreign place, except by direction of some proper officer of the United States; or whoever shall have in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent unlawfully to use the same, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

Penalty for false impersonation.

SEC. 76. Whoever, when applying to be admitted a citizen, or when appearing as a witness for any such person, shall knowingly personate any person other than himself, or shall falsely appear in the name of a deceased person, or in an assumed or fictitious name; or whoever shall falsely make, forge, or counterfeit any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens; or whoever shall utter, sell, dispose of, or shall use as true or genuine, for any unlawful purpose, any false, forged, antedated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or whoever shall sell or dispose of to any person other than the

person for whom it was originally issued any certificate of citizenship or certificate showing any person to be admitted a citizen, shall be fined not more than one thousand dollars, or imprisoned not more than five years; or both.

Penalty for use of forged certificate.

SEC. 77. Whoever shall use or attempt to use, or shall aid, assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, counterfeit, or antedated, or knowing the same to have been procured by fraud or otherwise unlawfully obtained; or whoever, without lawful excuse, shall knowingly possess any false, forged, antedated, or counterfeit certificate of citizenship purporting to have been issued under any law of the United States relating to naturalization, knowing such certificate to be false, forged, antedated, or counterfeit, with the intent unlawfully to use the same; or whoever shall obtain, accept, or receive any certificate of citizenship, knowing the same to have been procured by fraud or by the use or means of any false name or statement given or made with the intent to procure, or to aid in procuring, the issuance of such certificate, or knowing the same to have been fraudulently altered or antedated; or whoever, without lawful excuse, shall have in his possession any blank certificate of citizenship provided by the Bureau of Naturalization with the intent unlawfully to use the same; or whoever, after having been admitted to be a citizen, shall, on oath or by affidavit, knowingly deny that he has been so admitted, with the intent to evade or avoid any duty or liability imposed or required by law, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

Idem.

SEC. 78. Whoever shall in any manner use, for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order, certificate judgment, or exemplification has been unlawfully issued or made; or whoever shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

Idem.

SEC. 79. Whoever shall knowingly use any certificate of naturalization heretofore or which hereafter may be granted by any court, which has been or may be procured through fraud or by false evidence, or which has been or may hereafter be issued by the clerk or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; or whoever, for any fraudulent purpose whatever, shall falsely represent himself to be a citizen of the United States without having been duly admitted to citizenship, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

Penalty for perjury.

SEC. 80. Whoever, in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken, shall be fined not more than one thousand dollars and imprisoned not more than five years.

These proceedings applicable to naturalization.

SEC. 81. The provisions of the five sections last preceding shall apply to

all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization may be commenced or attempted to be commenced, and whether such court was vested by law with jurisdiction in naturalization proceedings or not. (35 Stat. L., pt. 1, p. 1102.)

[By the terms of section 341 of the act referred to above the foregoing sections specifically repealed sections 5395, 5424, 5425, 5426, 5428, and 5429 of the Revised Statutes of the United States, as well as sections 16, 17, and 19 of the act of June 29, 1906, 34 Stat. L., pt. 1, p. 596.]

Laws Repealed by the Act of May 9, 1918

[The act of May 9, 1918, Public No. 144, Sixty-fifth Congress, contained the following provisions:]

Acts repealed.

SEC. 2. * * * That all acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed; but nothing in this act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this act and under the limitation therein defined: *Provided*, That for the purposes of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to this act the statutes and laws hereby repealed shall remain in full force and effect: *Provided further*, That as to all aliens who, prior to January first, nineteen hundred, served in the Armies of the United States and were honorably discharged therefrom, section twenty-one hundred and sixty-six of the Revised Statutes of the United States shall be and remain in full force and effect, anything in this act to the contrary notwithstanding.

[And specifically repealed the following: Sections 2166, 2171, 2174, United States Revised Statutes; and so much of an act approved June 26, 1894, entitled "An act making provisions for the naval service for the fiscal year ending June 30, 1895, and for other purposes (28 Stat. L., p. 124), as relates to naturalization; and so much of an act approved June 30, 1914, entitled "An act making appropriations for the naval service for the fiscal year ending June 30, 1915, and for other purposes (38 Stat. L., pt. 1, p. 392), as relates to naturalization; and so much of section 3 of an act approved June 25, 1910 (36 Stat. L., pt. 1, p. 830), as relates to naturalization; and Public Act, No. 55, Sixty-fifth Congress, approved October 5, 1917.]

Aliens entitled to benefits, when.

Any person of foreign birth who served in the military or naval forces of the United States during the present war, after final examination and acceptance by the said military or naval authorities and shall have been honorably discharged after such acceptance and service, shall have the benefits of the seventh subdivision of section 4, of the Act of June 29, 1906, 34 Statutes at Large, part 1, page 596, as amended, and shall not be required to pay any fee therefor; and this provision shall continue for the period of one year after all of the American troops are returned to the United States. (Public No. 21, 66th Cong. H. R. 7343. An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1920, and for other purposes.)

An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and nineteen.

Approved July 9, 1918; U. S. Stats. at Large, 1917-1918, 885

SEC. 4. That the second sentence of section two of the Act entitled

"An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, be, and is hereby, amended to read as follows:

That such draft as herein provided shall be based upon liability to military service of all male citizens or male persons not alien enemies who have declared their intention to become citizens between the ages of twenty-one and thirty years, both inclusive, and shall take place and be maintained under such regulations as the President may prescribe not inconsistent with the terms of this Act: *Provided*, That a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen and he shall forever be debarred from becoming a citizen of the United States.

NEGOTIABLE INSTRUMENTS

2612. A person who indorses a note in blank usually warrants the solvency of the parties. *Jensen v. Wilslef*, 36 Nev. 37, 52 (132 P. 16; Ann. Cas. 1914D, 1220).

2613. Under this section, one who indorses in blank a certificate of deposit is liable to the holder where the paper is dishonored owing to the insolvency of the bank. *Id.*

An Act relative to the transfer of negotiable instruments and other choses in action and to make proof of certain facts prima facie evidence in certain actions pertaining thereto, in the courts of the State of Nevada.

Approved March 13, 1913, 111

Certain persons deemed agent.

SECTION 1. Whenever any person not doing a banking business claiming to be or to have been the owner or holder of any negotiable instrument or other chose in action, is proved to be or to have been an employee, attorney, partner, officer, stockholder or agent of the original owner of the same, or whenever any such person is proved to be or to have been an habitual purchaser of negotiable instruments or other choses in action from such original owner, such proof shall be prima facie evidence that such person took such negotiable instrument or other chose in action with notice of every and all outstanding defenses and counterclaims against the original owner thereof; also that he took the same as the agent of such original owner and that he held the same as such agent at all times during which he claims to be or to have been such owner or holder.

"Person" defined.

SEC. 2. The word "person," as used herein, is hereby declared to include the plural as well as the singular and also corporations, associations and partnerships.

"Habitual purchaser" defined.

SEC. 3. The taking of two or more negotiable instruments or choses in action at two or more different times from the same transferor by the same transferee shall constitute such transferee an habitual purchaser within the meaning of this act.

Application of act.

SEC. 4. This act shall apply only to actions brought against the original obligor, but shall not apply to actions brought by the personal representative or representatives of a decedent.

NEVADA HISTORICAL SOCIETY

An Act in relation to the keeping and preservation of the state museum of mineralogical, geological, and other historical specimens.

Approved March 15, 1915, 137

WHEREAS, The Nevada historical society, trustee for the State of Nevada, has for one of its main objects the collection of historical material for a state museum and historical library; and

WHEREAS, Said society is now provided with a brick building for the housing of said museum and library; and

WHEREAS, The state museum, including the Pioneer society collection and other historical materials, now housed in the office of superintendent of public instruction, and by act of February 1, 1877, placed in the custody of said superintendent of public instruction, cannot be given room in the new office in the capitol; neither, by reason of other duties, has he time to act as curator of the same; now, therefore:

Disposition of state museum.

SECTION 1. The state mineral cabinets and other cases, mineral and other specimens and historical books, pictures, and curios, which constitute the state museum in the office of superintendent of public instruction, are hereby transferred to the custody of the Nevada historical society, to be kept and preserved by said society for the benefit of the people of the state.

An Act to provide for the printing of the papers of the Nevada historical society.

Approved March 2, 1917, 41

Papers to be printed.

SECTION 1. The superintendent of state printing shall cause to be printed fifteen hundred copies of each biennial volume of historical papers issued by the Nevada historical society, all of which shall be delivered to the secretary of said society to be sold for the benefit of said society, or used by it for distribution to its members or for exchange.

Plates and binding paid, how.

SEC. 2. All plates for illustrating any volume shall be furnished to the state printer by the Nevada historical society, and all binding of the historical papers other than paper shall be paid for by the society.

An Act to provide for the collection of historical facts and material connected with Nevada's participation in the great war and assigning to the Nevada historical society the work of compiling the history of Nevada in the said war, and making an appropriation therefor.

Approved March 27, 1919, 253

War history of Nevadans.

SECTION 1. The Nevada historical society is hereby authorized and directed to collect and compile the facts relative to the participation of the

State of Nevada and of Nevadans in the military and naval service of the United States and in all civilian activities connected with the prosecution of the great war and to prepare a volume properly setting forth these facts as an historical record.

Historical society custodian.

SEC. 2. The Nevada historical society is hereby authorized to become the custodian of all historical records, data, pictures and all war relics of the great war not properly a part of the records of regularly organized state departments which may be, or hereafter become, the property of the State of Nevada.

SEC. 3. [Carrying appropriation; omitted.]

State printer to do printing and binding—Distribution of copies.

SEC. 4. The state printer is hereby directed to print not to exceed ten thousand copies of the said historical volume on the requisition of the state board of examiners and to bind as many copies of the said edition as may be directed by the said board.

It shall be lawful for the State of Nevada to supply one complimentary copy of the said volume to each soldier or sailor from the State of Nevada and referred to therein, or to the family of such soldier or sailor who may apply for the same.

It shall be lawful for the state board of examiners to sell the said history at a price to be determined by the said board and any receipts from the sale thereof shall be deposited with the state treasurer to be placed in the general fund.

No portion of the five thousand dollars hereinbefore appropriated for the preparation and compilation of this history shall be employed in printing the same.

NOTARIES PUBLIC

2764. Section 4 added to act as follows:

Females may be appointed.

SEC. 4. Females over the age of twenty-one years who have resided in this state one year, and in the county or district six months next preceding the making of such appointment, shall be eligible for appointment as notaries public. *Added, Stats. 1913, 31.*

An Act concerning notaries public who are stockholders, directors, officers, or employees of banks or other corporations.

Approved March 2, 1917, 42

Notary public connected with bank.

SECTION 1. It shall be lawful for any notary public who is a stockholder, director, officer or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment of bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation; *provided*, it shall be unlawful for any notary

public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument.

OFFICERS GENERALLY

2770. Electors, when and where to convene.

SEC. 6. The electors so chosen shall convene at the seat of government on the second Monday in January next after their election at 2 o'clock in the afternoon, or on such other date as the Congress of the United States may by law hereafter provide, and in case of the death or absence of any elector so chosen or in case the number of electors shall from any cause be deficient the electors then present shall forthwith elect from the qualified electors of the state as many persons as shall supply the deficiency. *As amended, Stats. 1917, 391.*

2771. Duties when convened.

SEC. 7. The electors, when convened on said second Monday in January, shall vote by ballot for one person for president and one person for vice-president of the United States, one of whom, at least, shall not be an inhabitant of this state. They shall name in their ballots the persons voted for as president, and in distinct ballots the persons voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes given for each, which list they shall sign and certify and transmit, sealed up, to the seat of government of the United States, directed to the president of the senate; and they shall, in all respects, proceed conformably to the constitution of the United States, and the laws of the United States in this behalf. *As amended, Stats. 1917, 392.*

2827. This section does not prohibit a member of the legislature from entering into a contract for the construction of highways, which contract grew out of a legislative enactment passed by a former legislature of which he was not a member. *Berney v. Alexander*, 42 Nev. 423, 426 (178 P. 979).

2848. Who may appoint deputies—Qualification.

SECTION 1. All prosecuting attorneys, county recorders, clerks of the several district courts, county clerks, sheriffs, assessors, collectors of taxes and constables are hereby authorized to appoint deputies, who shall have power to transact all official business appertaining to said officers, to the same extent as their principals; *provided*, that no person shall be appointed a deputy sheriff or a deputy constable unless such person shall have been a resident of the State of Nevada for at least six months prior to the date of such appointment. *As amended, Stats. 1913, 108.*

2851-2854. Whether or not Const. art. 6, sec. 6, gives the district court jurisdiction for the removal of county officers, article 7, section 4 of the constitution gives the legislature plenary power to provide procedure therefor, and therefore these sections giving such jurisdiction are constitutional. *Gay v. District Court*, 41 Nev. 330, 336 (171 P. 156).

These sections do not violate the constitutional provision that one charged with crime is entitled to a jury trial, because the legislature has plenary power in such cases. *Id.*

A proceeding for removal of a county officer need not be brought in the name of the state under these sections, giving procedure for removal of officers. *Id.*

Where the requirement under these sections, that officer removed shall pay complainant \$500, is waived, the constitutionality of such requirement cannot be considered. *Id.*

The title to these sections relates to only the one subject of removal of officers, although it provides several independent methods for removing them. *Id.*

Complaint on behalf of state for benefit of the county, stating that the complainant is a citizen, resident and taxpayer of the county, and is foreman of the grand jury, and at the request of the grand jury petitions for removal of county commissioner, was a proper petition under these sections, and not under Rev. Laws, 6894, et seq., providing for removal after jury trial, since the allegations on the grand jury's request were surplusage; the complaint being sufficient without them. *Ex Parte Jones and Gregory*, 41 Nev. 523, 526-532 (173 P. 885).

2855-60. Repealed, Stats. 1917, 59.

An Act to provide for the recall of public officers in the State of Nevada.

Approved March 26, 1913, 400

Every public officer subject to recall.

SECTION 1. Every public officer in the State of Nevada is subject, as in this act provided, to recall from office, by the qualified electors of the state or of the county, district or municipality from which he was elected.

Method of procedure—Petition.

SEC. 2. For the purpose of recalling any public officer there shall be first filed with the officer with whom the petition for nomination to such office is required by law to be filed, a petition, signed by the qualified electors who voted in the state, or in the county, district, or municipality electing such officer, equal in number to twenty-five per cent of the votes cast in said state, or in the county, district or municipality for the office of justice of the supreme court, at the last preceding election; said petition shall also contain the residence of the signer, and set forth, in not to exceed two hundred words, the reason why said recall is demanded.

Regulations regarding petition.

SEC. 3. Such petition shall consist of any number of copies thereof, identical in form with the original, except for the signatures; every such copy shall be verified by at least one of the signers thereof, who shall make oath before any officer authorized by law to administer oaths, that the statements and signatures contained in the petition are true. Upon filing such petition the officer with whom the same shall be filed shall, not sooner than ten days nor more than twenty days thereafter, issue a call for a special election to be held within twenty days after the issuance of the call therefor, in the state, or in the county, district or municipality electing such officer, to determine whether the people shall recall such officer; *provided, however*, that if such officer shall offer his resignation within five days after the filing of the petition aforesaid, such resignation shall be accepted, and the vacancy thereby caused shall be filled in the manner provided by law; if such officer shall not resign, he shall continue to perform the duties of his office until the result of said special election shall be finally declared.

Reason for recall printed.

SEC. 4. On the ballot at said election there shall be printed verbatim, as set forth in the recall petition, the reason for demanding the recall of said officer and, in not more than two hundred words, the officer's justification of his course in office, if furnished by him.

Form of election.

SEC. 5. If there be no other candidate nominated to be voted for at said special election, there shall be printed on the ballot the name of the officer sought to be recalled, the office which he holds, and the words "For Recall" and "Against Recall"; if there be other candidates nominated for the office to be voted for at said special election, there shall be printed upon the ballot the name of the officer sought to be recalled, and the office which he holds, and the name or names of such other candidates as may be nominated to be voted for at said special election, and the words "For Recall" and "Against Recall" shall be omitted; in other respects the ballot shall conform with the requirements of the general election laws of the State of Nevada.

Who deemed elected.

SEC. 6. If there be other candidates nominated to be voted for at the special election, the candidate who shall receive the highest number of votes at said special election shall be deemed elected for the remainder of the term, whether it be the person against whom the recall petition was filed or another.

Vacancy, how filled.

SEC. 7. If any officer be recalled upon such special election, and other candidates are not nominated to be voted for at such special election, the vacancy thereby created shall be filled in the manner provided by law.

No recall within six months—Exception.

SEC. 8. No petition for the recall of any public officer shall be circulated or filed against any such officer until he has actually held his office six months, save and except that it may be filed against a senator or assemblyman in the legislature at any time after ten days from the beginning of the first session after his election; after one such petition and special election, no further recall petition shall be filed against the same officer during the term for which he was elected, unless said further petitioners shall pay into the public treasury, from which the expenses of said special election have been paid, the whole amount paid out of said public treasury as expenses for the preceding special election.

Opposing candidates nominated, how.

SEC. 9. Other candidates for the office may be nominated to be voted for at said special election by petition, which said petition shall be signed by the qualified electors of the state, or in the county, district or municipality holding such election, equal in number to twenty-five per cent of the number of votes cast for the justice of the supreme court in the state, or in the county, district or municipality holding such election at the last preceding general election; *provided, however*, that no elector shall be qualified to sign any such nominating petition who shall have signed any petition for the recall of such officer for said special election.

Petition filed, when.

SEC. 10. Said nominating petition shall be filed with the officer with whom the said recall petition is filed, at least fifteen days prior to date of said special election.

General election laws to apply.

SEC. 11. The general election laws of this state, so far as applicable, shall apply to all elections held under this act.

An Act to prohibit state, county, municipal and township officials from employing or keeping in their employ any person or persons related to them within the third degree of consanguinity, or affinity, and providing penalties for the violation of the provisions of this act.

Approved February 13, 1915, 17

Nepotism prohibited—Degree of prohibition.

SECTION 1. From and after July 1, 1915, it shall be unlawful for any state, township, municipal, or county official, elected or appointed, to employ or to keep in his employ on behalf of the State of Nevada, or any county thereof, in any capacity, his wife, son, daughter, or any person or persons related to him (by blood or marriage) within the third degree of consanguinity or affinity. Nothing in this act shall be deemed to disqualify any widow as an employee of any state or county officer.

Payment prohibited.

SEC. 2. No person employed contrary to the provisions of this act shall be entitled to or allowed compensation for such employment.

Penalty for violation.

SEC. 3. Any violation of this act shall constitute a misdemeanor, and upon conviction shall subject the person found guilty to a fine of not less than \$100 nor more than \$1,000, or to imprisonment in the county jail for not less than thirty days nor more than six months, or to both such fine and imprisonment.

OFFICIAL BONDS

An Act to provide surety bonds for state, district, county, city, and township officers at public expense.

Approved March 24, 1917, 340

Officers bonded, how.

SECTION 1. Every state, district, county and city officer within the State of Nevada, who is now required by law, or who may be hereafter required by law, to give an official bond, may have a surety company, which has complied with all the laws of this state relating to surety companies, execute such bond, pursuant to law, for the faithful performance of the duties of such office.

Premiums, how paid.

SEC. 2. The premium for any such surety bond shall be paid for by the state, if the bond is required for a state officer, or by the district, county or city, as the bond may be required, out of any moneys in their respective treasuries not otherwise appropriated by law; *provided, however*, that no premium or charge shall exceed one-half of one per cent per annum on the amount of such bond; *and provided further*, that this act shall not apply to notaries public.

Duty of board or officer.

SEC. 3. Whenever any of the aforesaid officials shall tender bonds of any surety company for approval to the governor, to the district judge, to the county commissioners of their respective counties, or to any official board or person required by law to approve the same, it shall be the duty of such board or person to accept such bonds, if found good and sufficient.

OFFICIAL OATH

2891. Repealed, Stats. 1915, 275, and following act substituted:

An Act prescribing the official oath of the State of Nevada, and repealing a certain act.

Approved March 22, 1915, 275

2891. Who required to take oath—Form of.

SECTION 1. Members of the legislature, and all officers, executive, judicial, and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath:

I,....., do solemnly swear (or affirm) that I will support, protect, and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of....., on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.

OPTOMETRY

2892-6. Repealed by implication by Stats. 1913, 129.

An Act to regulate the practice of optometry and for the appointment of a board of examiners in the matter of said regulation.

Approved March 17, 1913, 129

Definition of "practicing optometry."

SECTION 1. Any person shall be deemed to be practicing optometry within the meaning of this act who shall display a sign, or in any way advertise him or herself as an optician or optometrist, or who shall employ any means for the measurement of the powers of vision, or the adaptation of lenses for the aid thereof, or who shall, in the sale of spectacles or eyeglasses or lenses, use in the testing of the eyes therefor, lenses other than the lenses actually sold.

Certificate necessary.

SEC. 2. It shall be unlawful for any person to engage in the practice of optometry in the State of Nevada unless such person shall have obtained a certificate of registration from the Nevada state board of examiners in optometry, as hereinafter provided.

Creation of state board of examiners.

SEC. 3. There is hereby created a board whose duty it shall be to carry out the purposes and enforce the provisions of this act, and shall be styled the Nevada state board of examiners in optometry. Said board shall be appointed by the governor as soon as practicable after the passage of this act, and shall consist of three persons actually engaged in the practice of optometry and residing in the State of Nevada. Each member of said board shall hold office for a term of three years, one member of the board

to retire every year, but members shall hold office until their successors are appointed and qualified. Appointments to fill vacancies caused by death, resignation or removal, shall be made for the residue of such term by the governor. The members of said board, before entering upon their duties, shall respectively take and subscribe to the oath required to be taken by other state officers, and filed with the clerk of the county in which said member resides, and said board shall have a common seal.

Composition of board—Meetings.

SEC. 4. Said board shall choose at its first regular meeting, and annually thereafter, one of its members as president, and one secretary thereof, who severally shall have the power during their term of office to administer oaths and take affidavits, certifying thereto under their hand and the seal of the board. Said board shall meet at least once in each year at Reno, Nevada, and in addition thereto whenever and wherever the president and secretary thereof shall call a meeting; a majority of said board shall at all times constitute a quorum. The secretary of said board shall keep a full record of the proceedings of said board, which record shall at all reasonable times be open to public inspection.

Examination—Fee.

SEC. 5. Every person, before beginning to practice optometry in this state, after the passage of this act, shall pass an examination before the said board of examiners. Such examination shall be confined to such knowledge as said board deems essential to the practice of optometry. Examinations shall be given by the board at least two times in each year, the first examination to be given on the first Monday in May and to be held in Reno, Nevada; the second examination to begin on the second Monday in October and to be held in Reno, Nevada, and at such other times as the board may deem necessary. Any person desiring to be examined by said board must fill out and swear to an application furnished by the board, and must file same with the secretary of said board at least two weeks prior to the holding of an examination, which the applicant is desirous of taking. Each applicant on making application shall pay to the secretary of the board a fee of twenty-five dollars, which shall be for the use of said board. All persons successfully passing such examination shall be registered in the board register, which shall be kept by said secretary, as licensed to practice optometry, and shall receive a certificate of such registration, to be signed by the president and secretary of said board, upon the payment to the secretary of said board of the additional sum of five dollars, which sum shall be for the use of said board.

All practitioners must pass examination.

SEC. 6. Every person who is actually engaged in the practice of optometry in the State of Nevada, at the time of the passage of this act and who desires to continue the practice of the same in this state, shall, within three months thereafter, submit themselves to the provisions of section 5, and take the examination therein required, and if found qualified, the board shall, in consolidation of the sum of five dollars, issue to him or her a certificate of registration.

Who entitled to practice.

SEC. 7. All persons receiving a certificate of registration under the provisions of section 6 shall be thereafter entitled to practice, subject to the provisions of this act.

Fees for recording certificates.

SEC. 8. All recipients of said certificates of registration shall present

the same for filing to the clerk of the county in which they reside, and shall pay a fee of one dollar to the clerk for recording same. Said clerk shall record said certificate in a book to be provided by him for that purpose. Any person so licensed who travels from one county to another in this state shall, before engaging in the practice of optometry in such other county, present his or her certificate of registration to the county clerk of such county for record, and the county clerk of such county shall receive a fee of one dollar for recording said certificate. Any failure, neglect or refusal on the part of any person holding such certificate of registration, or certified copy of such registration, to record the same, as hereinbefore provided, for three months after the issuance of said certificate of registration, shall ipso facto work the forfeiture of his or her certificate of registration, and it shall not be restored except upon the payment of twenty-five dollars to the Nevada state board of examiners in optometry.

Limit of time for examinations.

SEC. 9. Any person entitled to the provisions of section 6 of this act who shall fail to take the examination therein required, within three months after the passage and approval of this act, shall thereafter be required to pass the examination and pay the fee as set forth in section 5 of this act.

Certificate must be displayed.

SEC. 10. Every person to whom a certificate of registration is granted shall display the same in a conspicuous part of his or her office wherein the practice of optometry is conducted.

Expenses of board, how paid.

SEC. 11. Out of the funds coming into the possession of said board, each member thereof may receive as compensation the sum of five dollars for each day actually engaged in the duties of his office, and mileage at seven cents per mile for all distances necessarily traveled in going to and coming from the meetings of the board. Said expense shall be paid from the fees and assessments received by the board, under the provisions of this act, and no part of the salary or other expense of the board shall ever be paid out of the state treasury. All moneys received in excess of said per diem allowance and mileage as above provided for shall be held by the secretary as a special fund for meeting the expense of said board and carrying out the provisions of this act, and he shall give such bonds as the board shall from time to time direct, and the said board shall make an annual report of its proceedings to the governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this act.

Annual fee.

SEC. 12. Every registered optometrist who desires to continue the practice of optometry in this state, shall annually, on or before the first day of May of each year, pay to the secretary of said board a registration fee to be fixed by the board, and which in no case shall exceed the sum of two dollars per annum, for which he or she shall receive a renewal of such registration, and in case of the default of such payment by any person, his or her certificate shall be revoked by the board of examiners, on twenty days' notice in writing by the secretary of the time and place of considering such revocation, and the deposit of said notice in the United States postoffice, addressed to the person at his or her last known place of residence or business, and the postage prepaid thereon shall be due and legal service thereon, but no certificate shall be revoked for such nonpayment if the person notified shall pay before or at the time of considering

said revocation, his or her fee and such penalty as may be imposed by said board; *provided*, that said board may impose a penalty not exceeding ten dollars upon persons so notified as a condition for allowing certificates to stand valid. Any person whose certificate of registration has been revoked for failure to pay his renewal fee, as herein provided, may apply to have the same regranted, and the same shall be regranted to him or her upon his or her paying to the board all renewal fees that should have been paid had the certificate of registration not been revoked, together with a penalty of twenty-five dollars.

Certificate may be revoked, how.

SEC. 13. Any person registered as provided in this act may have his or her certificate of registration revoked or suspended by the Nevada state board of examiners in optometry for any of the following reasons:

1. His or her conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction, or certified copy thereof by the clerk of the court, or by the judge in whose court the conviction is had, shall be conclusive evidence.

2. When his or her certificate has been secured by fraud practiced upon the board.

3. For unprofessional conduct, or for gross ignorance or inefficiency in the profession. Unprofessional conduct shall mean employing what is known as "cappers," or "steerers," to obtain business; the obtaining of any fee by fraud or misrepresentation; employing, directly or indirectly, any suspended or unlicensed optician or optometrist to perform any work covered by this act; the advertising of optical business or treatment or advice in which untruthful or impossible statements are made; or habitual intemperance or gross immorality.

4. When the holder is suffering from a contagious or infectious disease; *provided*, however, that before any certificate shall be revoked or suspended the holder shall have notice in writing of the charge or charges against him or her, and at a date specified in said notice, at least five days after the service thereof, be given a public hearing, and have an opportunity to produce testimony in his or her favor, and to confront the witnesses against him or her. Any person whose certificate has been suspended may, after the expiration of ninety days, apply to have the same regranted, and the same shall be regranted him or her upon satisfactory showing that the disqualification has ceased.

Penalties for violation.

SEC. 14. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars nor more than two hundred dollars, or shall be confined not less than one month nor more than three months in the county jail, and in default of payment of said fine shall be imprisoned in the county jail at the rate of one day for every two dollars of the fine imposed, and all fines thus received shall be paid to the secretary of the board for the purpose of enforcing this act.

Peace officers to act.

SEC. 15. All justices of the peace and the respective municipal courts shall have jurisdiction of violations of this act. It shall be the duty of the respective district attorneys to prosecute all violations of this act, and it shall be the duty of police officers, sheriffs, constables and marshals to report any violation of this act to the secretary of the state board of examiners in optometry, and render such assistance to the board, or an officer thereof, as they may be called upon to perform.

Not to apply in certain cases.

SEC. 16. Nothing in this act shall be construed to apply to persons licensed to practice medicine in this state or to give any person the right to attach the title M.D., surgeon, doctor, physician, oculist, ophthalmologist, eye-specialist, doctor of refraction, doctor of ophthalmology, doctor of optometry, or any word or abbreviation to his name indicating that he is engaged in the treatment or diagnosis of defects, or injuries of the human eye, or to use drugs or medicine in any form for the treatment or examination of the human eye, or to use any therapeutic measures or agencies other than glasses for the treatment of the human eye; nor to persons who merely sell spectacles, eye-glasses, or lenses as merchandise.

Must be of legal age.

SEC. 17. It shall be unlawful for the board of examiners of optometry to grant a certificate to any one in the State of Nevada under legal age.

POISONS

An Act to regulate the sale and use of poisons in the State of Nevada, and providing a penalty for the violation thereof.

Approved March 24, 1913, 284

Restricting sale and use of—Druggist to keep record.

SECTION 1. It shall be unlawful for any person to vend, sell, give away or furnish, either directly or indirectly, any poisons enumerated in schedules "A" and "B" in section 7 of this act as hereinafter set forth, without labeling the package, box, bottle or paper in which said poison is contained, with the name of the article, the word "POISON," and the name and place of business of the person furnishing the same. Said label shall be substantially in the form hereinafter provided. It shall be unlawful to sell or deliver any of the poisons named in schedule "A" or any other dangerously poisonous drug, chemical, or medical substance, which may from time to time be designated by the state board of pharmacy of Nevada, unless on inquiry it is found that the person desiring the same is aware of its poisonous character, and it satisfactorily appears that it is to be used for a legitimate purpose. It shall be unlawful for any person to give a fictitious name or make any false representations to the seller or dealer when buying any of the poisons thus enumerated. Printed notice of all such additions to the schedule of poisons named and provided for in this section, and the antidote adopted by the board of pharmacy for such poisons shall be given to all registered pharmacists with the next following renewal of their certificates. It shall be unlawful to sell or deliver any poison included in schedule "A" or the additions thereto, without making or causing to be made an entry in a book kept solely for that purpose, stating the date and hour of sale, and the name, address and signature of the purchaser, the name and quantity of the poison sold, the statement by the purchaser of the purpose for which it is required, and the name of the dispenser, who must be a duly registered pharmacist.

Said book shall be in form substantially as follows:

Date and Hour	Name of Purchaser	Residence	Kind and Quality	Purpose of Use	Signature of Druggist	Signature of Purchaser
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This book shall always be open for inspection by the proper authorities, and shall be preserved for at least five (5) years after the date of the last entry therein.

Form of label.

SEC. 2. The label required by this act, to be placed on all packages of poison, shall be printed upon red paper in distinct white letters, or in distinct red letters upon white paper, and shall contain the word "poison," the vignette representing the skull and cross-bones, and the name and address of the person or firm selling the same. The name of an antidote, if any there be, for the poison sold, shall also be upon the package.

Board of pharmacy to adopt and publish antidotes.

SEC. 3. It shall be the duty of the state board of pharmacy to adopt a schedule of what in their judgment are the most suitable common antidotes for the various poisons usually sold. After the board has adopted the schedule of antidotes as herein provided for, they shall have the same printed and shall forward by mail one copy to each person registered upon their books, and to any other person applying for the same. The particular antidote adopted (and no other) shall appear on the poison label, provided for in section 2 of this act, or be attached to the package containing said poison. The board shall have power to revise and amend the list of antidotes from time to time, as to them may seem advisable. The entries in the poison book and the printed or written matter provided for in sections 2 and 3 of this act shall be in the English language; *provided*, that the vendor of said poison may enter the same in any foreign language he may desire, in addition to said entry and label in English.

Board may further restrict sale.

SEC. 4. When in the opinion of the state board of pharmacy it is in the interest of the public health, they are hereby empowered to further restrict or prohibit the retail sale of any poison by rules, not inconsistent with the provisions of this act, by them to be adopted, and which rules must be applicable to all persons alike. It shall be the duty of the board, upon request, to furnish any dealer with a list of all articles, preparations and compounds, the sale of which is prohibited or regulated by this act.

Wholesalers must use poison label.

SEC. 5. Wholesale dealers and pharmacists shall affix or cause to be affixed to every bottle, box, bottle or other enclosure of an original package containing any of the articles named in schedule "A" the additions thereto, or in sections 8 or 9 of this act, a suitable label, or brand, with the word "POISON," but they are hereby exempted from the registration of the sale of such articles when sold at wholesale to a registered pharmacist, physician, dentist or veterinary surgeon duly licensed to practice in the state; *provided*, that the provisions of this act shall not apply to the sale of such upon the prescriptions of practicing physicians, dentists or veterinary surgeons who are duly licensed to practice in this state.

District attorney to prosecute.

SEC. 6. It is hereby made the duty of the district attorney of the county wherein any violation of this act is committed, to conduct all actions and prosecutions for the same, at the request of the board of pharmacy; *and provided further*, that any narcotic or narcotics, or their derivatives, may be seized by the judge of the court in which final conviction was had, that the judge shall turn all such evidence over to the Nevada state board of pharmacy; *and provided further*, that the said board of pharmacy may dispose of all narcotics now on hand or hereafter coming into their possession, either by gift to the medical director of the Nevada state prison, or the state hospital, or by sale to wholesale druggists, the funds received from such sale to be applied by the board of pharmacy to the carrying out of

the provisions of this act, creating such Nevada state board of pharmacy. *As amended, Stats. 1915, 119.*

Penalties.

SEC. 7. Any person violating any of the provisions of section 8 of this act shall upon conviction be punished as follows, viz: For the first offense by a fine of not less than one hundred dollars, and not to exceed two hundred and fifty dollars, or by imprisonment for not more than 100 days, or by both fine and imprisonment; for the second offense by a fine of not less than two hundred and fifty dollars, and not to exceed five hundred dollars, or by imprisonment for not more than 200 days, or by both such fine and imprisonment; and for the third offense by imprisonment in the state prison for not less than one year and not more than five years. Any person violating any of the provisions of this act, except those contained in section 8, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than thirty dollars nor more than one hundred dollars, or by imprisonment for not more than fifty days or by both such fine and imprisonment.

The following is schedule "A" referred to in section 1, viz: Schedule "A": Arsenic, its compounds and preparations, corrosive sublimate, corrosive sublimate tablets, antiseptic tablets containing corrosive sublimate, cyanide of potassium, strychnine, hydrocyanic acid, oils of croton, rue and tansy, phosphorus and its poisonous derivatives or compounds, stropanthus or its preparations.

The following is schedule "B" referred to in section 1, viz: Aconite, belladonna, nux vomica, veratrum, veride or preparations, alkaloids or derivatives, hydrochloric or muriatic acid, nitric acid, oxalic acid, bromide, chloroform, sulphuric acid, cowhage, creosote, ether, solution of formaldehyde or formalin, cantharides, cocculus indicus, Indian hemp, or their preparations, iodine or its tinctures, oils of savin and pennyroyal, tartar emetic and other poisonous derivatives of antimony, sugar of lead, sulphate of zinc, and wood alcohol.

Prohibited drugs enumerated—Prescriptions—Record.

SEC. 8. It shall be unlawful for any person, firm, or corporation to sell, furnish or give away, or offer to sell, furnish or give away, or to have in their or his possession any cocaine, opium, yen shee, morphine, codeine, heroin, alpha eucaine, beta eucaine, nova caine, anhalonium (peyote or mescal button), cannabis sativa (Indian hemp or loco weed), or chloral hydrate, or any of the salts, derivatives, or compounds of the foregoing substances, or any preparation or compound containing any of the foregoing substances or their salts, derivatives, or compounds excepting upon the written order or prescription of a physician, dentist, or veterinary surgeon licensed to practice in this state, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, written in by the person writing said prescription, or if ordered by a veterinary surgeon it shall state the kind of animal for which ordered and shall be signed by the person giving the prescription or order. Such order or prescription shall be permanently retained on file by the person, firm, or corporation who shall compound or dispense the articles ordered or prescribed, and it shall not be again compounded or dispensed if each fluid or avoirdupois ounce contains more than eight grains of opium, or one grain of morphine, or two grains of codeine, or one-half grain of heroin, or one grain of cocaine, or one grain of alpha eucaine, or one grain of beta eucaine, or one grain of nova caine, or sixty grains of chloral hydrate, excepting upon the written order of the prescriber for each and every subsequent compounding or dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person, but the original shall be at all

times open to inspection by the prescriber and properly authorized officer of the law, and shall be preserved for at least three years from the date of the filing thereof; *provided*, that the above provisions shall not apply to sales at wholesale by jobbers, wholesalers and manufacturers to pharmacies legally licensed and doing business under the laws of the State of Nevada, or physicians, nor to each other, nor to the sale at retail by pharmacies to physicians, dentists, or veterinary surgeons duly licensed to practice in this state; *provided further*, that all such wholesale jobbers, wholesalers, and manufacturers, in this section mentioned, shall before delivery to any person, firm, or corporation of any of the articles in this section enumerated, make or cause to be made in a book kept for that purpose only, an entry of the sale of any such article, stating the date of such sale and quantity and name of the article and form in which sold, the true name and true address of the purchaser, the name of the person by whom such entry and sale was made, also a statement showing how delivery was had, whether delivered personally or forwarded by mail, express or freight, which book shall be substantially as follows:

Date of Sale	Quantity and Name of Article	Name of Purchaser	How Delivered	Name of Person Selling
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And said books shall always be open for inspection by any peace officer or citizen, or any member of the board of pharmacy, or any inspector by them authorized, and such books shall be preserved for at least five years after the date of the last entry therein. It shall be unlawful for any practitioner of medicine, dentistry, or veterinary surgeon to furnish to, or prescribe for the use of, any habitual user of the same, any cocaine, opium, morphine, codeine, heroin, anhalonium, cannabis sativa, or chloral hydrate, or any salt, derivative, or compounds, and it shall be unlawful for any practitioner of dentistry to prescribe any of the foregoing substances for any person not under his treatment in the regular practice of his profession, or for any veterinary surgeon to prescribe any of the foregoing substances for the use of any human being; *provided, however*, that the provisions of this section shall not be construed to prevent any duly licensed physician from furnishing or prescribing in good faith as their physician by them employed as such, for any habitual user of any narcotic drugs who is under his professional care, such substances as he may deem necessary for their treatment, when such prescriptions are not given or substances furnished for the purpose of evading the purposes of this act; *provided*, that the above provisions shall not apply to preparations sold or dispensed without a physician's prescription containing less than two grains of opium, or one-fourth grain of morphine, or one-half grain of codeine, or one-sixth grain of eucaïne, or one-sixth grain of nova caine, or one-sixth grain of beta eucaïne, or ten grains of chloral hydrate, or four grains of Indian hemp in one fluid ounce, or if a solid preparation in one avoirdupois ounce, or to the sale of strychnine or other poisons for the purpose of destroying noxious wild animals; *and it is further provided*, that it shall be the duty of every proprietor or manager of a pharmacy or drug store, within the State of Nevada, to keep a true and correct record of all orders forwarded to wholesalers, jobbers or manufacturers or traveling salesmen for the purchase of, in any manner, any cocaine, opium, yen shee, morphine, codeine, heroin, alpha eucaïne, beta eucaïne, nova caine, anhalonium, cannabis sativa or chloral hydrate, or any salt, derivative or compound thereof, within the meaning of the provisions of this act; *provided further*, that a true and correct copy of all orders, forwarded by U. S. mail or otherwise, or given personally any traveling salesmen for narcotic drugs, as specified in this section, shall be forwarded by registered mail to the secretary of the Nevada state board of pharmacy, within twenty-four hours after the forwarding of such order

direct or through a representative or traveling salesman; *and provided further*, the taking of any order, or making of any contract or agreement, by any salesman or representative, or any employee or person, firm or corporation, for future delivery in this state, for any of the articles or drugs mentioned in this section shall be deemed a sale of said articles or drugs by said traveling representative or employee within the meaning of the provisions of this act; *provided further*, that a true and correct copy of all orders, contracts or agreements taken for narcotic drugs specified in this section by any traveling representative or employee shall likewise be forwarded by such traveling representative or employee by registered mail to the secretary of the Nevada state board of pharmacy within twenty-four hours after the taking of such order, contract or agreement, unless such order, contract or agreement is recorded by entry in a book used for that purpose only by some wholesale jobber, wholesaler or manufacturer permanently located in this state, as provided for in this section. *As amended, Stats. 1915, 120; 1917, 27, 349.*

Food and drug officials to cooperate.

SEC. 9. The officials in charge of the food and drug act of this state are hereby designated and constituted agents for the enforcement of this act, and shall cooperate with the state board of pharmacy herein provided for, in carrying out the provisions of this act, and for this purpose they shall have free access at all times during business hours to all places where drugs, medicines or poisons are offered for sale.

POOR AND POOR LAWS

2924. Workhouses and poor-farms may be established.

SEC. 10. The board of county commissioners of any county in this state may, if they think proper, cause to be built or provide in their respective counties workhouses for the accommodation or employment of such indigents as may, from time to time, become a county charge, and such workhouse and indigents shall be under such rules and regulations as said board of county commissioners may deem proper and just; and said board of county commissioners may, if they think proper, purchase a suitable tract of land not to exceed eighty acres in extent, within four miles of said workhouse, or any county hospital heretofore or hereafter established, or any home for the indigent poor or sick heretofore or hereafter established, for a county poor-farm; and said board of county commissioners are hereby authorized to pay for the purchase of said county poor-farm out of the general fund of the county. *As amended, Stats. 1915, 17.*

PUBLIC DOCUMENTS

2937. Repealed by implication by Stats. 1913, 14, 26; 1917, 196 (following acts).

An Act supplemental to "An act to regulate the sale of state law books," approved March 5, 1907.

Approved February 26, 1913, 14

Price of "Constitutional Debates."

SECTION 1. The secretary of state is directed to sell the "Nevada Constitutional Debates and Proceedings" at three dollars (\$3) per volume,

and the money received from the sale of said books be turned into library fund of the state treasury.

An Act in relation to the sale of state law books.

Approved February 28, 1913, 26

Price of state law books.

SECTION 1. The secretary of state is hereby authorized and directed to sell the state law books at the following prices, namely: For each volume of the Nevada Reports, two dollars and twenty-five cents; for each volume of Nevada and Sawyer's Digest (1878), one dollar; for each volume Compiled Laws of Nevada (1861-1900), six dollars; Statutes of Nevada, two dollars a volume during the two years immediately succeeding the date of publication, and at the expiration of two years, one dollar a volume; Special Session Laws, 1908, and 1912, fifty cents per volume; for each volume of Constitutional Debates, 1864, three dollars; for each set of Revised Laws of Nevada, 1912, fourteen dollars a set.

All fees to library fund.

SEC. 2. All fees collected in the office of the secretary of state shall be paid into the state treasury for the use and benefit of the library fund.

An Act defining the duties of the secretary of state in regard to the disposition of certain publications, and other matters in relation thereto.

Approved March 15, 1917, 196

Price of legislative journals.

SECTION 1. The secretary of state shall sell to the public, on application, the journals of the senate and assembly for fifty cents per volume.

Price of to legislature.

SEC. 2. The secretary of state may sell to the members of this and succeeding legislatures the Revised Laws of Nevada at three dollars per set, but not more than one set shall be sold at this price to any one member.

2947-51. Repealed, Stats. 1915, 277.

PUBLIC HEALTH

2952. Board created—Composition of.

SECTION 1. The state board of health is hereby created, consisting of the governor, secretary of state, and three other members who shall be graduated licensed physicians with the degree of M.D., and to be appointed by the governor. The three additional members shall be appointed by the governor for the term of four years. The president of the board shall be the governor. In appointing such additional three members of the board, the governor shall designate one of them to be secretary of said board. *As amended, Stats. 1919, 221.*

2955. Duties of secretary—Salary.

SEC. 4. The secretary shall be the state health officer and executive officer of the board and the state registrar of vital statistics. He shall carefully compile the reports of the various health officers of this state as hereinafter provided, keep the minutes of all meetings of the board and attend to all correspondence in carrying out the provisions of this act. He shall investigate sanitary conditions and the prevalence of disease in

the state and perform such other duties as the state board of health may direct or this act or any other act may require. It shall be his duty to strictly enforce all laws passed for the protection of the public health and improvement of sanitary conditions of the state and to enforce all rules, regulations and orders of the state board of health. He shall receive a salary of \$2,500 the year, and his necessary expenses actually incurred in the performance of his duties, to be paid monthly in the same manner as the salary and expenses of other state officers are paid, upon vouchers signed by the secretary of the state board of health, and approved by the state board of examiners. *As amended, Stats. 1919, 222.*

2957. Local health officer, duties, salary.

SEC. 6. On or before January 1 next following each general fall election the board of county commissioners shall appoint a local health officer for the county, who shall be learned in sanitary science, public health practice and the diagnosis of infectious diseases, and shall fix his compensation. His term of office shall be for one year or until his successor has been appointed and qualified. He shall be ex officio member of the county board of health and shall be the executive officer thereof and may be county physician; and shall act as a collector of vital statistics for his county and is empowered to appoint such deputy or deputies as may be necessary, with the approval of the board of county commissioners. For performing the duties prescribed in this act he shall receive from the county a sum not less than twenty-five dollars (\$25) per month, or such greater amount as may be determined by the board of county commissioners. The board of county commissioners are directed to allow a claim for this or for such greater sum as they may deem proper for the work performed; the deputies appointed by the local health officer, with the approval of the county commissioners, shall be paid the compensation agreed upon for performing the duties prescribed by the state board of health and by this act in the same manner. The deputy health officers shall file with the local health officer of the county monthly reports, and all original birth and death certificates executed by them, not later than the 5th day of each month, which said reports shall be compiled by the local health officer and forwarded to the secretary of the state board of health not later than the 10th day of each month. In counties where deputy registrars are appointed, the county commissioners shall allow them a monthly salary or the sum of one (\$1) dollar for each birth and death certificate executed by them.

In the case of refusal or neglect of any board of county commissioners to appoint a county health officer for thirty days after January 1 next following any general fall election, or if a vacancy shall exist in the office of county health officer for a period exceeding thirty days, the state board of health may make such appointment for such county for that term and fix the compensation, and a health officer so appointed shall have the same duty, power and authority as though appointed by the county board of health. *As amended, Stats. 1913, 126; 1919, 222.*

2968. Certain statistics required—Quarantine must be established.

SEC. 17. (a) That all superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of the approval of this act, that are required in the forms of the certificates provided for by this act, as directed by the state board of health; and thereafter such record shall be, by them, made for all future inmates at the time of their admission. And in case of persons

admitted or committed for medical treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself, if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

(b) It shall be the duty of every attending physician to forthwith report to the local health officer each and every case of scarlet fever, smallpox, diphtheria, and membranous croup, typhus and typhoid fever, foyers and whooping cough, measles, chickenpox, pneumonia, tuberculosis, bronchitis, acute anterior poliomyelitis, cerebrospinal meningitis, diarrheal diseases of children, cancer, puerperal septicemia, mumps, and Rocky Mountain (tick) fever, and the local health officer shall make a record thereof. Any attending physician who shall fail or neglect to forthwith report to the local health officer any case of scarlet fever, smallpox, diphtheria, and membranous croup, typhus and typhoid fever, foyers and whooping cough, measles, chickenpox, pneumonia, tuberculosis, bronchitis, acute anterior poliomyelitis, cerebrospinal meningitis, diarrheal diseases of children, cancer, puerperal septicemia, mumps, and Rocky Mountain (tick) fever shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than ten days nor more than thirty days, or by both such fine and imprisonment.

(c) It shall be the duty of every attending physician upon any case of scarlet fever, smallpox, diphtheria, and membranous croup, whooping cough, measles, chickenpox, acute anterior poliomyelitis, cerebrospinal meningitis, diarrheal diseases of children, puerperal septicemia or mumps to forthwith establish and maintain a quarantine of such person or persons or the family and premises thereof in conformity with the requirements, rules, and regulations which shall be established by the state board of health, and any attending physician who fails to establish and maintain such quarantine in conformity with the requirements, rules, and regulations of the state board of health shall be guilty of a misdemeanor, and punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or by both such fine and imprisonment. *As amended, Stats. 1915, 249.*

State board of health—General authority.

SEC. 25. 1. The said board shall have general supervision over all matters relating to the preservation of the health and life of citizens of the state, and shall especially study the vital statistics of the state and endeavor to put the same to intelligent and profitable use. They shall make sanitary investigations and inquiries respecting the causes of disease, especially epidemics, the causes of mortality, and the effects of localities, employments, conditions, habits and circumstances, and shall diffuse such information as they may deem proper. They shall, when required, advise public boards or officers in regard to location, drainage, water supply, disposal of excreta, heating and ventilation of any public building or institution, and shall recommend, from time to time, works of hygiene for the use of the public schools. They shall send their epidemiologist or a committee to any part of the state whenever necessary to investigate the cause and circumstances of an outbreak of a communicable or unusual disease. The board shall prepare and issue from time to time popular bulletins of educational value, pertaining to sanitation and the causes and prevention of disease; and they shall, in January of each odd-numbered year, report to

the governor their transactions, investigations and discoveries during the preceding term and such suggestions for legislation as they think fit. They shall have power to designate diseases reportable in addition to such diseases herein designated as contagious, infectious and reportable. They shall possess all powers necessary to fulfil the duties prescribed in the statutes and to bring action in the courts for the enforcement of health laws and health rules. They shall have power to make sanitary inspections and surveys in all parts of the state, and after due notice, to enter upon and inspect private property in regard to the presence of cases of infectious and contagious diseases and to determine the cause and source of disease. The state board of health at any regular or special meeting may, in its discretion, empower the state health officer to act for the board upon such matters as it may determine in issuing and enforcing orders in compliance with the public health laws and rules and regulations adopted by the board.

2. *Quarantine, Drainage, Alleys, Etc.* The state board of health when necessary, shall have power to establish a quarantine, may modify, relax and abolish it when it has been established and may order and execute what is reasonable and necessary for the prevention and suppression of disease; to close schools and churches; forbid public gatherings when deemed necessary to control epidemics; to condemn and abate conditions detrimental to health or likely to cause disease, in accordance with law.

3. *Rules, Enforcement Of.* The board shall have power to adopt and enforce rules and regulations governing the duties of all health officers and health boards in conformity with this act, and any violation of said rules shall be punished by a fine not less than ten dollars, nor more than one hundred dollars for each offense. All rules adopted and published in conformity with this section shall bear the seal of the state board of health and be attested by the state health officer. Such rules and regulations shall be published in a paper or papers of general circulation and distributed in pamphlet or leaf form to all health officers and any citizen asking for the same. Such rules and regulations shall not be effective until after their publication.

4. *State Epidemiologist—Duties, Salary.* When an emergency therefor exists the board shall employ an epidemiologist who shall be a physician, learned in epidemiological methods, a skilled bacteriologist and experienced in the diagnosis of infectious diseases. When making laboratory investigations in any capacity, he shall work under the direction of the director of said hygienic laboratory. It shall be his duty to investigate all epidemics and threatened epidemics of communicable diseases that may occur in the state and advise the local health officers as to the best measures to be taken to prevent and control such diseases, and he shall supervise all measures taken by the local health officers for the suppression and control of disease and perform such other duties as the state board of health may from time to time prescribe. He shall receive such compensation as may be agreed at the time of his employment. *Added, Stats. 1919, 223.*

State board—Powers as to contagious diseases—Effect of rules.

SEC. 26. The board shall have power to establish such system of inspection as in their judgment may be necessary to ascertain the presence of the contagion or infection of Asiatic cholera, diphtheria, scarlet fever, smallpox, plague, leprosy, typhus or ship fever, yellow fever or any other dangerous contagious disease—the words “dangerous contagious disease,” as used in this section, meaning such dangerous contagious and infectious diseases as the board shall designate as contagious and dangerous to the public health; and any member or duly authorized agent or inspector of said board may enter when necessary to protect the public, any public or private premises,

building, railway car or other public vehicle to inspect the same and remove therefrom any person affected by such a disease, and for this purpose may require the person in charge of any public vehicle, other than a railway car, to stop the same at any place, and may require the conductor of any railway train to stop his train at any station or upon any sidetrack for such time as may be necessary. The board may also, from time to time, and when necessary, make, alter, modify, or revoke rules and regulations for guarding the introduction of any disease into the state, for the control and suppression thereof within it, for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by such disease, for the transportation of dead bodies, for the speedy and private interment of the bodies of persons who have died from dangerous contagious diseases, for the proper sanitary care of jails, asylums, schoolhouses, hotels and all other public buildings and the premises connected therewith, and in emergency may provide those sick with any such disease with necessary medical aid and with temporary hospitals for their accommodation and also for their nurses and attendants. The board may declare any or all of its rules and regulations made in accordance with the provisions of this section to be in force within the whole or any specified part of the state and make them applicable to any railway car or public vehicle of any kind. Such rules and regulations, if of general application, shall be published in a paper or papers of general circulation; but whenever, in the judgment of the board, it shall be necessary so to do, special rules, regulations or orders may be made for any city, village or town without being so published, and the service of copies thereof upon the proper city, village or town officers shall be sufficient notice thereof. Rules, regulations or orders made in accordance herewith shall supersede all local rules, regulations or ordinances that may be in conflict therewith. All health officers, local boards of health, sheriffs, constables, policemen, marshals and other officers and employees shall respect and enforce the rules and regulations made in pursuance hereof in every particular affecting their respective localities and duties. It is the duty of all city, county, town, and village officers, of all local boards of health, and all officers and persons in charge of all institutions, buildings and vehicles within this section to cooperate with the state board of health in carrying out these provisions. *Added, Stats. 1919, 224.*

County board of health, composition.

SEC. 27. Each of the several counties of the State of Nevada shall establish a county board of health to consist of the board of county commissioners, sheriff, and the local health officer of the county, who shall act as chairman of the board, and the county recorder shall be the clerk thereof. All of said officers shall serve without additional compensation. *Added, Stats. 1919, 225.*

County board of health, powers and duties.

SEC. 28. It shall be the duty of the said county board of health to oversee all sanitary conditions of the respective county in which the board is created and to make such rules and regulations as may be necessary for the prevention, suppression and control of any contagious or infectious disease, dangerous to the public health, which rules and regulations shall take effect from and after their approval by the state board of health. They shall have the authority to abate nuisances in accordance with law, to establish and maintain an isolation hospital or quarantine station when necessary, and to restrain, quarantine and disinfect any person or persons sick with or exposed to any contagious or infectious disease, dangerous to

the public health. They are empowered to appoint quarantine officers when necessary to enforce quarantine, and shall provide whatever medicines, disinfectants, and provisions may be required, and shall arrange for the payment of all debts or charges so incurred from any funds available; *provided, however*, each patient shall, if able, pay for his food, medicine, clothes, and medical attendance. The county board of health shall be subject to the supervision of the state board of health, and shall make such reports to the state board as the state board may require. *Added, Stats. 1919, 226,*

City board of health, composition—Health officer.

SEC. 29. Every city of the first and second class shall, and every city of the third class may, provide by ordinance for the establishment of a board of health therefor. Such board of health shall be composed of three members appointed by the mayor, at least one of whom shall be learned in sanitary science and public health practice and experienced in the diagnosis of infectious diseases, and shall be the local health officer and executive of the board. If no member, or more than one member, is experienced in the diagnosis of infectious diseases and learned in sanitary science, the board shall appoint the health officer. The compensation of the city health officer shall be prescribed by the city council and the same, together with his necessary expenses, shall be paid by the municipality in which he serves. *Added, Stats. 1919, 226.*

City board of health, powers and duties.

SEC. 30. It shall be the duty of the said city board of health to oversee all sanitary conditions of the respective city in which the board is created and to make such rules and regulations as may be necessary for the prevention, suppression and control of any contagious or infectious disease, dangerous to the public health, which rules and regulations shall take effect from and after their approval by the state board of health. They shall have the authority to abate nuisances, in accordance with statutes now in force or hereafter enacted, to establish a temporary isolation hospital or quarantine station when emergency demands, and to restrain, quarantine and disinfect any person or persons sick with or exposed to any contagious or infectious disease, dangerous to the public health. They are empowered to appoint quarantine officers when necessary to enforce quarantine, and shall provide whatever medicines, disinfectants, and provisions may be required, and the city council is directed to pay all debts or charges so incurred; *provided, however*, each patient shall, if able, pay for his food, medicine, clothes, and medical attendance. *Added, Stats. 1919, 226.*

Powers and duties of health officers.

SEC. 31. The local health officer of the county shall have supervision over all matters pertaining to the preservation of the life and health of the people of his county, except incorporated cities of the first and second class having a health officer appointed in accordance with the provisions of this act, which shall be under the jurisdiction of the city health officer, subject to the supervision and control of the state board of health. Every health officer shall have authority to order the abatement or removal of any nuisance detrimental to the public health in accordance with the laws relating to such matters. He shall cause proper measures in accordance with the rules and regulations and orders of the state board of health, to be taken to prevent, suppress and control any dangerous contagious or infectious disease within his jurisdiction—the words “dangerous contagious or infectious disease,” as used in this section, meaning such diseases

as the state board shall designate as contagious and infectious and dangerous to the public health as in this act provided.

All deputy health officers and city health officers in cities of the third class shall report immediately to the local health officer of the county every new outbreak of any contagious or infectious disease occurring within their jurisdiction. All county health officers and city health officers of cities of the first and second class shall report to the state board of health, on blanks provided for that purpose, all cases of contagious or infectious diseases reported to them in such manner and at such time as may be required by the rules and regulations of the state board.

Whenever a health officer shall know, suspect, or be informed of the existence of any dangerous contagious or infectious disease within his jurisdiction, it shall be his duty immediately to investigate such case and all circumstances connected therewith and at all times promptly to take such measures for the prevention, suppression and control of such disease as may be required by the rules and regulations of his board and the rules and regulations of the state board of health. Every health officer when necessary shall have power to remove to and restrain in an isolation hospital or quarantine station, or to quarantine or isolate, any person sick with a dangerous contagious or infectious disease until such person shall have thoroughly recovered and been disinfected; *provided*, that no person shall be removed to or restrained in an isolation hospital until such person has been examined by the local health officer or a medical deputy, to determine whether or not such removal may be carried out without endangering the life of such patient; *and provided further*, that such removal shall not be made unless the same is necessary in order to protect the public. He shall also quarantine, restrain, or disinfect any person or persons exposed to any dangerous contagious or infectious disease in such manner and for such time as necessary and as the rules and regulations of his board and the rules and regulations of the state board of health require. He shall disinfect any room or house or building and the contents thereof, or any clothing, bedding, furniture, or other article that may be infected, in such manner that the danger of conveying a disease by such means shall be destroyed. He shall have the right of entry on private property at reasonable hours for the purpose of investigating any case or suspected case of a contagious or infectious disease.

Contagious diseases in schools.

SEC. 32.

1. *Duty of Health Officer.* Upon the appearance of any dangerous contagious disease in any school district, it shall be the duty of the health officer in whose jurisdiction the schoolhouse is located to notify at once, in writing, the principal or teacher of such school and the librarians of all libraries in such school district, giving the names of all families where the disease exists. If the rules of the state board of health provide for the exclusion from school of teachers, or pupils from homes where such disease exists, the health officer shall request the principal of the school to exclude from school attendance all such persons until a written order signed by the health officer permitting attendance at school is presented.

2. *Duty of Principal or Teacher.* Whenever the principal or teacher of the school has been notified of the presence of a dangerous contagious disease in the school district, or whenever the principal or teacher of the school knows or believes that a dangerous communicable disease is present in the school district, it shall be the duty of such principal or teacher to at once notify the health officer in whose jurisdiction the schoolhouse is located of such sickness. The health officer shall then investigate all such

cases, to determine whether or not a dangerous contagious disease is present in such family, and take proper action.

3. *Exclusion from School.* Parents, guardians, or persons having custody of any child or children, shall not permit knowingly such child or children, if afflicted with a dangerous contagious disease, to attend school. *Added, Stats. 1919, 228.*

Use of state hygienic laboratory by state board of health.

SEC. 33. The state hygienic laboratory, which has been established in connection with the state university, shall be the official laboratory for the state board of health, and the director of said laboratory is hereby instructed to make for the said state board of health all examinations and analyses pertaining to the diagnosis and prevention of infectious diseases that may be reasonably requested under the provisions of sections 3941 and 3944 of the Revised Laws of 1912. *Added, Stats. 1919, 229.*

County clerk to report number of marriage licenses.

SEC. 34. It shall be the duty of the county clerks of the several counties of the state to transmit to the secretary of the state board of health, on or before the 10th day of January and the 10th day of July of each year the number of marriage licenses issued by him during the preceding six months. *Added, Stats. 1919, 229.*

SEC. 38. [Carrying appropriation; omitted.]

[Following sections—6, 7, 8—are from the act of 1919.]

Repeal.

SEC. 6. Those certain acts entitled "An act to create a county board of health in each of the several counties of the State of Nevada," approved March 2, 1905; "An act to provide for the recording of births and deaths in the several counties of the State of Nevada," approved February 26, 1887; "An act to provide for preventing the spread of contagious diseases," approved March 12, 1903; "An act to amend an act entitled 'An act creating a state board of health, defining their duties, prescribing the manner of the appointment of its officers, fixing their compensation, and making an appropriation for the support of said board, establishing county boards of health, requiring certain statements to be filed, and defining certain misdemeanors and providing penalties therefor, and other matters relating thereto,' approved March 27, 1911, by amending section six thereof and adding three new sections thereto, and providing for the renumbering of sections twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty," approved March 15, 1913; and all other acts and parts of acts in conflict herewith are hereby repealed. *Added, Stats. 1919, 229.*

Penalty for violation.

SEC. 7. A violation of any of the provisions of this act, by any person, firm, or corporation, or refusal or neglect to obey any lawful order, rule, or regulation of the state board of health shall be a misdemeanor and punishable as such. *Added, Stats. 1919, 230.*

Certain practitioners excepted.

SEC. 8. None of the provisions of this act or the laws of this state regulating the practice of medicine or healing shall be construed to interfere with the treatment by prayer or with any person who administers to or treats the sick or suffering by mental or spiritual means, nor shall any person who selects such treatment for the cure of disease be compelled to submit to any form of medical treatment, nor shall any such person be removed to any isolation hospital or camp without their consent; *provided,*

the sanitary and quarantine laws of the state are complied with. *Added, Stats. 1919, 230.*

2981-2. Repealed, Stats. 1919, 229.

2983-7. Repealed, Stats. 1919, 229.

2996-3003. Repealed, Stats. 1919, 229.

Stats. 1913, 126, c. 103, repealed, Stats. 1919, 229.

An Act requiring the examination of all school children to ascertain if they have defective eyesight or hearing, or diseased teeth, or if they are addicted to mouth-breathing.

Approved March 24, 1917, 355

Duties of teacher.

SECTION 1. It shall be the duty of all teachers engaged in teaching in the public schools of the state separately and carefully to test and examine every child under their jurisdiction to ascertain if such child is suffering from defective sight or hearing, or diseased teeth, or breathes through its mouth. If such test determines that any child has such defect, it shall be the duty of the teacher to notify, in writing, the parent of the child of such defect and explain to such parent the necessity of medical attendance for such child.

State board of health prescribes rules.

SEC. 2. The state board of health shall prescribe rules for making such tests, and shall furnish to boards of education and boards of trustees of school districts rules of instruction, test-cards, blanks, and other useful appliances for carrying out the purposes of this act.

When tests shall be made.

SEC. 3. During the first month of each school year, after the opening of the school, teachers must make tests required by this act upon the children then in attendance at school; and thereafter, as children enter school during the year, such tests must be made immediately upon their entrance.

Duty of boards of education.

SEC. 4. It shall be the duty of the boards of education and boards of trustees of the several school districts of the state to enforce the provisions of this act.

Certain children exempt.

SEC. 5. Any child shall be exempt from the examination herein provided upon written statement from his or her parents or guardian that they object to the same.

PUBLIC HIGHWAYS

3005. Work let by contract—Day labor, when.

SEC. 2. All work hereafter done upon highways, streets or alleys, whether in opening, improving, or keeping the same in repair, shall, when the probable cost of such contemplated work shall exceed five hundred dollars, be done by contract let to the lowest responsible bidder, and public notice of at least five days shall be given, describing the work to be done, the time and place that bids will be received, and the means of paying for such work. Such bids shall be sealed, all may be rejected, and if any are

accepted it shall be that of the lowest bidder who is responsible, or will give satisfactory security. In cases of emergency it shall be discretionary with the board of commissioners to let contracts for repairs without giving the five days' notice as is contemplated in this section. But no contract shall be let for an amount to exceed five hundred dollars without written notice; *provided*, that nothing in this act shall prevent any county, by and through its board of county commissioners, from opening, building, improving or repairing any public road or highway in such county by the employment of day labor, under the supervision of said board and by the use of its own machinery, tools and other equipment, without letting contracts to the lowest responsible bidder, irrespective of the probable cost of said work. *As amended, Stats. 1913, 268.*

3008. Thoroughfares may be opened, how—Width—Procedure.

SEC. 5. If twenty-four freeholders of any county shall petition the board of county commissioners of such county for the location, opening to the public use, reestablishment, change or vacation of any road or highway to connect with any highway heretofore established, or any street or alley in any unincorporated town in such county, setting forth in such petition the beginning, course and termination of such road, highway, street or alley proposed to be located, open to public use, reestablished, changed or vacated, together with the names of the owners or occupants of the land through which the same may pass, the auditor of such county shall lay such petition before the board of county commissioners at their next session thereafter, and thereupon such board of county commissioners may, within twenty days thereafter, proceed to locate, open to public use, reestablish, change or vacate such road, highway, street or alley; and the width of all public highways laid out or open under the provisions of this act shall be regulated and established by such boards of county commissioners; *provided*, no such highways shall exceed in width sixty feet. Before opening any new road, street or alley through any property, it shall be condemned to public use as follows: The board of county commissioners shall appoint two disinterested persons to view, lay out and locate such new road, street or alley, and such two persons in conjunction with two others, chosen by any owner or occupant, or by the several owners or occupants of the property to be traversed by such road, street or alley, shall ascertain the damage done to any property so traversed, after deducting any advantage arising from such road, street or alley, to the owner or occupant of such property. If such four persons cannot agree as to such damages, then they shall choose a fifth, and the decision of a majority of them shall govern, and be reported to the board of county commissioners. If the owner or owners or occupants of any property so condemned shall not acquiesce in the amount of damages so reported, an examination may be had before the board and witnesses be examined for the state and such owner or owners or occupants, and the decision of the board shall be final, unless such owner or owners or occupants appeal from the decision of the board within thirty days after such decision to the district court, which he or they may do in the same manner that appeals are taken from justices' courts to the district court. Upon finally determining such damages, the board shall provide for the payment of such damages, either by the person interested in such road, street or alley, or pay the same out of the county treasury as other claims are paid, and after such payment is made the board shall then cause such road, street or alley to be opened.

The board of county commissioners in their respective counties in the state are hereby authorized and empowered to accept the grant of rights of way for the construction of highways over public lands of the United States not reserved for public uses, contained in section 2477 of the

Revised Statutes of the United States, and such acceptance shall be by resolution of such county commissioners spread upon the records of their proceedings; *provided*, that nothing herein contained shall be construed to invalidate the acceptance of such grant by general public use and enjoyment heretofore or hereafter had. Such board of county commissioners are further authorized and empowered to locate and determine the width of such rights of way, provided the same shall not exceed in width sixty feet, and to locate, open for public use and establish thereon public roads or highways. *As amended, Stats. 1917, 55.*

3019. Similar section (Cutting, 437) cited, *Lund v. Washoe County*, 31 Nev. 233 (101 P. 550).

3022. Section 1a added as follows:

Owner of stock to repair road.

SECTION 1A. Any person, party or corporation driving sheep, goats, swine, horses or cattle along or across any public road or highway, or along or across any street or alley in any unincorporated town in this state for any purpose whatever, who by so doing damages or impairs said public road or highway or street or alley, as the case may be, shall be and he is hereby required, at his own expense, to make any and all repairs necessary to put said road, highway, street or alley in as good condition as it was before said damage was done. *Added, Stats. 1913, 238.*

3034. Compensation at current rates.

SEC. 6. Compensation to others than road inspector shall be not to exceed the current wage rate for day's work for the district in which such work is performed, and not to exceed the current price for one man and a span of draft animals and the current price for each additional span. The person so compensated shall, without additional charge, furnish such tools, implements, vehicles, and other necessary equipment, as may be necessary to his work. *As amended, Stats. 1917, 393.*

3035. Eight hours work—Emergency, when.

SEC. 7. A day's work on the public roads shall consist of at least eight hours actual labor, exclusive of the time spent in going to and returning from the work, and in no case shall pay be given for more than one day's time between sunrise and sunset of the same day, to or for the same person. In cases of emergency, however, more than eight hours labor shall be performed, and the persons so performing such labor shall be compensated for the time spent. *As amended, Stats. 1917, 394.*

3045. Water users must protect roads.

SECTION 1. From and after the passage of this act, all persons, corporations, or associations conducting water across any public road or highway, or across any street or alley in any unincorporated town in this state, for domestic, mining, agricultural, or manufacturing purposes, shall construct, at their own expense, good and substantial culverts or bridges over such crossing, and shall in no case allow any stream of water, diverted from its natural channel for such purposes by them, to flood or wash any public road or any street or alley in any unincorporated town of this state. *As amended, Stats. 1915, 373.*

3046. Violation of act—Penalty.

SEC. 2. Any person, corporation, or association violating any of the provisions of section one of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than fifty (\$50) dollars, nor more than five hundred (\$500) dollars. *As amended, Stats. 1915, 373.*

An Act to provide for the establishment of a uniform system of road government and administration in each of the several counties of the State of Nevada; for the creation of a board of county highway commissioners in each of the several counties, and defining the duties of the members thereof; to provide for the appointment of a county road supervisor and defining his duties; to authorize the board of county commissioners of each county to issue bonds and levy and collect taxes to pay the same for the purpose of creating a county road and bridge fund; to authorize the expenditure of said fund for roads and bridges, and the purchasing of machinery and implements for road work; to classify the county roads of the counties, and other matters relating thereto.

Approved March 26, 1913, 390

Board created.

ARTICLE 1

SECTION 1. That a board of county highway commissioners be and the same is hereby created in each of the several counties of the State of Nevada.

How constituted—Meetings—Quorum.

SEC. 2. The board of county highway commissioners of each of the several counties, hereinafter called the board, shall consist of five (5) members, and shall be composed of the regularly elected and qualified county commissioners, the county assessor, and the district attorney, and they shall hold office until their successors are duly elected, or appointed, and qualified. Each of the members of the board, before entering upon the duties of his office, shall take and subscribe to the constitutional oath of office, for the faithful performance of his duties as a member of the board. Said board must hold regular meetings monthly on or about the first of each month. Special meetings may be called by the chairman, but no bills shall be allowed at the special meetings. Every member shall be notified of special meetings in ample time to attend. Three (3) members shall constitute a quorum, but a majority vote of all the members shall be required at all times for the passing of any motion.

Officers—Duties—Records.

SEC. 3. The board shall elect one of its members chairman, and one of its members clerk, and it is empowered to make rules and regulations for governing itself for the enforcement of the provisions of this act, and shall have exclusive control of all matters pertaining to the construction, repairing and maintaining of public highways, roads and bridges within its county. The chairman shall perform the duties usually incumbent upon that office, and such other duties as may hereinafter be prescribed in this act. The clerk shall keep a full and complete record of all the proceedings of the board and an accurate account of all expenditures of money, which account shall show the purposes for which, and the persons to whom, the same were ordered expended. Immediately after each meeting of the board, or so soon thereafter as may be practical, he shall cause to be printed in the official county paper, or papers, or if there be no official county paper, then in a paper or papers of general circulation in the county, to be designated by the board, all the records and accounts of the board. On or about the first day of January and the first day of July of each year he shall likewise cause to be published a general statement of all expenditures made by the board. His records and accounts shall be kept in suitable books provided by the county, and shall be open to inspection of any qualified elector. He shall keep an inventory of all machinery, implements, and other property purchased for road and bridge work, and exercise

general care and supervision of the same, and perform such other duties as may be prescribed by this act, or by the board.

Road and bridge funds—Bonds. ARTICLE 2

SECTION 1. For the purpose of creating a fund in each of the several counties of the State of Nevada, to be known as the county road and bridge fund, and to be used in the construction, repairing, and maintaining of county roads and bridges; and the purchasing of machinery and implements necessary in such work, the boards of county commissioners of the several counties, each acting in and for its respective county, are hereby authorized, empowered and required, within ninety (90) days after the people of the county shall have authorized the issuance of such bonds, to prepare and issue bonds of the county in an amount not to exceed the equivalent of three per centum (3%) of the total taxable value of the real and personal property of the county, as shown by the last report of the county assessor, said amount to be exclusive of interest; *provided*, that the question of issuance of said bonds shall be submitted to the people of said county at an election, and the duly qualified electors shall authorize the issuance of same by a majority vote.

The county clerk shall cause the question of the issuance of such bonds to be printed on the official ballot in substantially the following form:

For the issuance of County Road and Bridge Bonds in the amount ofdollars, which amount is equivalent to.....per cent of the total taxable value of property of county.....Yes.

For the issuance of County Road and Bridge Bonds in the amount ofdollars, which amount is equivalent to.....per cent of the total taxable value of property of county.....No.

The per cent named shall be fixed by the board.

The result of the vote shall be declared in the same manner and form and at the same time as other election returns are canvassed and proclaimed; *provided*, that a special election may be called and held for the purpose of submitting to the people of the county the question of issuance of said bonds. Said special election shall be called and held in the manner hereinafter provided. The county clerk shall cause special ballots to be printed for said special election, said printing to be done within the county, and let after two consecutive weeks' advertising for bids in a paper of general circulation published within the county, to the lowest responsible bidder. The question of issuance of said bonds shall be printed on the special ballots in substantially the form as herein provided for the general election.

Commissioners to call special election, when.

SEC. 2. Upon the presentation of a petition to the board of county commissioners at any session, signed by not less than twenty per cent of the qualified electors of the county, as shown by the list of registered voters of the county at the last general election wherein it is asked that a special election be held for the purpose of submitting to the voters the question of the issuance of county road and bridge bonds in a certain specified amount (not exceeding three per cent) of the total taxable valuation of the property of the county, then the board of county commissioners shall forthwith arrange for, and call, and cause to be held within sixty days, a special election for the purposes set forth; *provided*, that such special election shall not be held twice within a year.

Notice—Election boards—Restriction of expense.

SEC. 3. Not less than twenty days previous to the date set for holding said special election, the board shall cause to be published in a paper or

papers of general circulation, published within the county, a notice of said special election. Said notice shall specify the polling-places in each election precinct, the date of election and the hours during which the polls shall remain open. It shall also name the election judge and clerks appointed for each precinct. Not less than two weeks prior to the election the board shall cause said notice of the election to be posted in at least one public place in each precinct. Prior to the time of publishing the notice of the special election, the board of county commissioners shall appoint for each precinct, from the electors thereof, a board of election to consist of three. One of said board shall be designated as judge, and two as clerks. If the board of county commissioners fails to appoint a board of election, or the members appointed do not attend the opening of polls on the morning of election, the electors of the precinct present at the hour may appoint a board, or supply the place of an absent member thereof. The board of county commissioners must in its order appointing the board of election designate the hour and the place in the precinct where the election must be held. The cost of services of the board shall be paid out of the county treasury in the usual manner, but in no case shall any member of the board of election receive more than ten dollars (\$10).

Any elector whose name regularly appears on the list of registered voters of the county for the last general election shall be qualified to vote at the special election herein provided for, and the registrars for the last general election and the county clerk are hereby authorized and required to furnish the board of the election of each precinct with a copy of the list of registered voters for its respective precinct. Voters may transfer from one election precinct to another as in the general election laws provided.

Manner of election.

SEC. 4. The judge or clerks of a board of election may administer all oaths required in the progress of an election, and may appoint clerks, if, during the progress of an election, any clerk ceases to act. The clerks may likewise appoint a judge. Before opening the polls each member of the board must take and subscribe to an oath to faithfully perform the duties imposed upon him by law. Any member of the board or an elector may administer and certify such oath. The time of opening and closing the polls, the manner of conducting the election, canvassing and announcing the result, the keeping of the tally-list, and the making and certifying said results, and the disposition of the ballots after election, shall be the same, as near as may be, as provided for elections under the general election laws; *provided*, that all returns may be forwarded to the county clerk by registered mail, or they may be delivered in person by a member of the board; *and provided further*, that no list, tally-paper, or certificate of returns shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of county commissioners must meet at its usual place of meeting on the first Monday after an election to canvass the returns, and they shall proceed in the same manner and with like effect, as near as may be, in canvassing the returns of general elections, and when they shall have declared the result, the county clerk shall make full entry thereof in his records, as required in general elections.

The county clerk is hereby authorized, empowered and required to furnish to each election board a sufficient number of ballots, tally-paper, certificate of returns and such other supplies as may be necessary to carry out the provisions of this act, and all necessary expense in the carrying out of the provisions of this act shall be paid out of the general county fund.

Bonds—Interest.

SEC. 5. All bonds authorized and issued under the provisions of this act

shall be in the denominations of \$1,000, \$500 or \$100 each as the board of county commissioners shall determine. They shall be in such form as said board of county commissioners shall prescribe, and be numbered consecutively from first to last, and bear interest at not to exceed six per centum per annum, payable semiannually, according to the tenor and effect of said bonds.

They shall be signed by the chairman and clerk of the board of county commissioners, countersigned by the county treasurer, and authenticated with the seal of the county. Coupons for the interest, payable semiannually, shall be attached to each bond so that the same may be removed without injury to the bond, and each of said coupons shall be consecutively numbered and signed by the original or engraved facsimile signature of the chairman and the clerk of the board of county commissioners and the county treasurer.

Record.

SEC. 6. The clerk of the board of county commissioners shall keep a record of all proceedings under the provisions of this act, showing the number and date of each bond, and to whom issued.

Negotiation of bonds.

SEC. 7. The board of county commissioners is hereby authorized to negotiate the sale of said bonds by advertising for sealed proposals by publication of a notice of the proposed sale in some newspaper of general circulation published within the county, at least once a week for four consecutive weeks prior to the date fixed for opening such bids, and also by publication in such other newspapers or financial journals as the board may order; *provided*, that no bonds shall be sold for less than their par value, and that the bonds and the interest thereon shall be made payable in gold coin of the United States; *and provided further*, that the said board shall sell said bonds to the highest and best bidder or bidders, or in their discretion may reject any and all proposals, and advertise anew.

Redemption after two years.

SEC. 8. Said bonds, together with the interest thereon, shall be redeemable annually on the first day of January, of the third year succeeding their sale at the office of the county treasurer of the county, and interest on such bonds shall cease as the same mature.

Order of redemption.

SEC. 9. On the first day of January of the third year succeeding their sale, and annually thereafter, one or more of said bonds, as shall be designated by the board, together with the interest thereon, shall be paid and redeemed by the county treasurer. The payment and redemption of said bonds shall be in the order of their issuance, the lowest bond to be the first paid and redeemed, and so on until the whole amount of bonds issued under the provisions of this act shall have been paid and redeemed. Coupons shall be paid semiannually, and in no case shall any of said bonds run for a longer period than forty years; *provided*, that the board may, in its discretion and with the consent and approval of the holders of the bonds, redeem any or all of said bonds, but they shall in no case pay a premium of more than ten per cent therefor.

Fund for redemption.

SEC. 10. For the purpose of creating a fund for the payment of the bonds authorized by this act and the interest thereon, the board of county commissioners is hereby authorized and required to levy and collect annually a sufficient tax on all property, both real and personal, within the

boundaries of the county, to redeem said bonds and the payment of the accumulated interest on all the bonds issued under this act. Such tax shall be levied and collected in the same manner, and at the same time as other taxes are assessed and collected, and the proceeds thereof shall be kept by the county treasurer in a special fund to be known as the county road and bridge redemption fund. All poll taxes collected shall enter into and become a part of the county road and bridge redemption fund, or if such fund be not created, then such poll tax shall enter into and become a part of the county general road fund.

Tax ceases, when.

SEC. 11. Whenever the bonds and interest provided for in this act shall have been fully paid, the tax authorized by this act ceases, and all money remaining in said county road and bridge redemption fund shall be transferred to the general fund of the county.

Treasurer to cancel.

SEC. 12. Whenever the county treasurer shall pay any bonds or coupons issued under the provisions of this act he shall cancel the same by writing across the face thereof "Paid," together with the date of such payment, sign his name thereto, and turn the same over to the county auditor, taking his receipt therefor, and the auditor shall credit the treasurer on his books with the amount so paid.

Costs of election, how paid.

SEC. 13. All necessary costs for the special election required in carrying out the provisions of this act shall be paid out of the general county fund in the manner usually provided by law.

ARTICLE 3

County road supervisor appointed, how—Bond—Salary—Duties.

SECTION 1. At the first regular meeting of the board of county highway commissioners of each of the several counties after this acts takes effect said board may at their option appoint the county road supervisor; said county road supervisor, hereinafter called the supervisor, shall take and subscribe to the constitutional oath of office and enter into a bond with at least two sureties in the penal sum of \$2,500, payable to the county, and conditioned for the faithful performance of his duties. The bond shall be approved by the board of county commissioners, and filed with the county clerk. He shall hold the office during the pleasure of the board. The board shall fix the salary of the supervisor, said salary, however, not to exceed \$2,000 a year, together with the actual traveling expenses in the performance of his duties, said salary and expenses to be paid out of the county treasury in the usual manner provided for payment of county officers. It shall be the duty of the supervisor under the direction of the board to take charge of all county roads, and supervise and direct the building, repairing, and maintaining of the same, to lay out roads on the best grades and alignments possible, to repair, plan, and supervise and furnish estimates for the board's guidance, and performance of such other duties as the board may direct and by this act required. If the board of county commissioners shall decide not to appoint a road supervisor for the county, they may, at their option, appoint a board of road commissioners for each district, to consist of one to three members, who shall exercise the duties of the road supervisors herein provided. The road commissioners of each district, the boundaries of which may be fixed by the board of county commissioners, may be appointed by the board of county commissioners of each county until after the year 1916, when they may be elected in the

same manner as in the case of other township officers; they shall hold office until their successors are duly elected or appointed and qualified, and shall take and subscribe to the constitutional oath of office before entering upon their duties; they shall have supervision over all road work within their respective districts and may appoint whomsoever they may choose to do said work; all vouchers shall be signed by at least a majority of said commissioners and allowed as in the usual course of claims against the county, but no board of district road commissioners shall contract for any amount of work in excess of the funds set aside for such district by the board of county commissioners, unless in case of an emergency, when by order of the county commissioners a larger amount may be expended. The county commissioners shall set aside for each road district the sums of money apportioned for each road district at their first meeting in January or as soon thereafter as possible. *As amended, Stats. 1915, 362.*

When bond issue defeated.

SEC. 2. If at the general election or the special election called and held for the issuing of county road and bridge bonds a majority of the voters of the county shall vote against the issuance of said bonds, and no special county road and bridge fund be thereby created, or if for any other reason said fund be not created, then the cost of all county road and bridge work performed shall be paid out of the county general fund, by order of the board; *provided*, that such work shall have been performed by the order of and under the direction of the board or the supervisor, and according to the provisions of this act. All claims presented to the board shall be duly sworn and subscribed to and attested by the supervisor.

Additional salaries, when.

SEC. 3. If at the general election or special election called and held for the issuing of county road and bridge bonds, a majority of the voters of the county shall vote for the issuance of said bonds, then each of the members of the board shall receive in addition to his regular salary \$10 per month, save and except the clerk of the board, who shall receive in addition to his regular salary \$25 per month, said salaries to be paid out of the county treasury in the manner usually provided for the payment of county officials.

ARTICLE 4

Commissioners to classify roads.

SECTION 1. The board of county highway commissioners of each of the several counties of the State of Nevada shall, on or before September 1, 1913, lay out and designate which of the roads, now generally termed public highways, are the most important to the people of the whole county, and over which there is the greatest amount of general public travel. Such roads shall be termed and designated as main county roads. They shall also lay out and designate the other roads of the county over which there is general public travel, and which are now generally termed county roads, and these shall be termed and designated as general county roads; *provided*, that in the discretion of the board it may, from time to time, reclassify the roads and may lay out new roads of either class, or it may change or abandon any roads now termed as public highways.

Standard of roads.

SEC. 2. When any roads shall have been rebuilt or constructed and made to meet with such specifications as may be outlined by the board, which shall include grading, draining, macadamizing or graveling, and shall have been declared by the board to be standard county roads, then they shall be termed and designated as standard county roads. When the board shall have declared and designated any road to be a standard county road, then

the cost of maintaining such road shall be paid out of the general county fund, in the same manner as provided in article 3 of this act.

Map to be made.

SEC. 3. Upon laying out and designating the county roads as required in section 1 of this article, the board shall cause to be made a map of the county, showing the county roads and their designations; one copy of said map shall be filed with the clerk of the board of county highway commissioners, one copy shall be filed with the county clerk, and one copy shall be filed with the county recorder. When any road shall have been designated by the board as a standard county road, as provided in section 2 of this article, such designation shall be made on the copies on file with the clerk of the board, the county clerk and the county recorder.

All roads to receive attention.

SEC. 4. The roads designated by the board as main county roads shall be the first to be constructed or improved and made to meet the requirements and specifications of standard county roads. But no road or roads shall receive the attention of the board or the supervisor to the exclusion of the other county roads. It is the intention and purpose of this act to improve all the county roads in the proportion of their public travel and their degree of importance to the people of the whole county, and the board will be so guided in its operations.

ARTICLE 5

Purposes for which funds expended.

SECTION 1. All money appropriated or expended by the board of county highway commissioners, whether it be appropriated or expended out of the county road and bridge fund which may be created by article 2 of this act, or out of the general fund, as provided in article 3 of this act, must be expended by the board for the purposes hereinafter named and for no other purposes, to wit:

For laying out, grading, draining, graveling or macadamizing, maintaining, and, when deemed necessary, sprinkling or oiling roads, the purchase of road machinery necessary for the construction of said roads, and the maintenance of same, the purchase of property necessary in road construction, the purchase of material and machinery for the construction of all superstructures necessary to the perfect drainage of a highway, and for all work performed by order of and under the direction of the board.

Character of work.

SEC. 2. All superstructures shall consist of masonry, concrete, glazed sewer-pipe, iron or steel. No lumber or other perishable material shall be used, except when absolutely necessary. For the better guidance of road construction and the expenditure of money for the same, the board shall observe this order of construction as far as it is possible so to do:

First—The laying out of a road on the most practical grades and alignment;

Second—The grading and draining of said road;

Third—The construction of permanent superstructures;

Fourth—The graveling or macadamizing of all such roads; and

Fifth—The maintaining of the same.

Work amounting to \$500 must be advertised—Day labor, when.

SEC. 3. To perform any work or construct any superstructure under this act, wherein an expenditure of five hundred dollars or more may be necessary, the board shall cause to be made definite plans of said work or superstructure, estimates of the amount of work to be done and the probable

cost thereof, together with a copy of the specifications thereof. The board upon receipt thereof must advertise for bids for the performance of the work specified. All bidders must be offered an opportunity to examine such plans and specifications, and the board shall award the contract to the lowest responsible bidder, and the plans and specifications so adopted shall be attached to and become a part of the contract; and the person or persons or corporation to whom the contract is awarded shall be required to execute a bond to be approved by the said board for the faithful performance of such contract; *provided*, that after the submission of the bids, the board may, in its discretion, reject any and all bids, and advertise anew; or, it may order the work done by day's work under the supervision of the supervisor.

Contract under \$500 may be let, how.

SEC. 4. To perform any work or construct any superstructure under this act, wherein an expenditure of less than five hundred dollars may be necessary, the board may, in its discretion, let the same by contract without advertising for bids, or it may order the same done by day's work, under the general supervision of the supervisor.

Bids for furnishing material and machinery.

SEC. 5. The furnishing of all material and all machinery for the purposes of this act shall be done by advertisements for bids in the same manner, as far as possible, as designated herein for road work.

Supervisor to inspect.

SEC. 6. The supervisor shall have power to inspect any work performed under the provisions of this act, and advise as to the efficiency or quality of all material and machinery purchased by the board or in any manner used for the purposes of this act. Any failure to comply with a contract, or any defect in the character of material or machinery shall be reported to the board, and the board shall immediately proceed to have remedied any such failure or defect. The board shall have power to deduct the value of such failure or defect from the contract price agreed to be paid the contractor.

Partial payments, when.

SEC. 7. The board shall have power to make partial payments upon all contracts let by virtue of this act, not to exceed seventy-five per cent of the work done, when the same shall be certified by the supervisor as properly performed.

Restriction on letting contracts.

SEC. 8. No contract shall be let in conformity to this act exceeding the amount of money in the county road and bridge fund; or when the cost of work is to be paid out of the general county fund as provided in article 3 of this act, no contract shall be let exceeding in amount the money in the general county fund.

Annual inspection required.

SEC. 9. It shall be the duty of the supervisor to view, at least once a year, every county road within his county.

ARTICLE 6

Officers not interested in contracts.

SECTION 1. No member of the board of county highway commissioners, nor the supervisor, who shall hold office under and by virtue of this act, shall directly or indirectly act as agent of, or in any way whatever represent or act for any manufacturing concern or corporation or individual selling or handling machinery, implements, material or anything which

may be used in road work; and no machinery, implements, material or thing, save and except such as cost less than fifty dollars (\$50) and is usually kept in stock and sold at usual prices, shall be purchased in any manner whatsoever from any manufactory or store or any concern of any kind in which any member of the board or the supervisor is interested directly or indirectly. Nor shall any such officer receive any gift or reward or other thing for recommending or suggesting or in any manner influencing the expenditure of money for anything. Nor shall any member of the board be interested, directly or indirectly, in any contract made by the board, or work ordered done by the board. Every contract made in violation of this section shall be null and void, and any officer violating this section shall, upon conviction, be punished as provided in the penal code of the State of Nevada, and shall be removed from office and forfeit his bond.

ARTICLE 7

Claims must be sworn to.

SECTION 1. All claims against the county in relation to the county roads and bridges shall be presented to the clerk of the board of county highway commissioners on a prepared form at least one day before the regular meeting day of the board. There shall be printed on said form an oath that the amount claimed is just and correct, which must be subscribed to by the claimant. Said claim shall also be certified by the supervisor.

Claims paid regularly.

SEC. 2. Upon the approval of any claim by the board of county highway commissioners, the county auditor is hereby authorized, empowered, and required to draw a warrant for the amount named in said claim, and to the person or persons named therein as claimants, in the manner usually provided by law; *provided*, that nothing in this section shall interfere with or prevent said auditor from exercising his veto power provided by law.

Treasurer to keep fund distinct.

SEC. 3. The county treasurer shall and it is hereby made his duty to keep the county road and bridge fund, provided for in this act, in a separate and distinct fund. He shall pay out of this fund all warrants drawn on him by the auditor for road purposes, but under no conditions shall he pay out of this fund for other purposes.

An Act to provide for the better preservation of public roads and highways.

Ditches to be maintained. Approved March 24, 1913, 303

SECTION 1. All persons, associations, firms, or corporations conducting water across any public road or highway in this state, or across any street or alley in any unincorporated town of this state, for domestic, mining, agricultural, or manufacturing purposes, is hereby required to construct, repair and maintain, at their own expense, good and substantial culverts, as the case may be, over such crossings, and shall in no case, allow any stream of water, diverted from its natural channel, to flood or wash any public road, or any street or alley in any unincorporated town of this state. The construction and repairing of said bridge or culvert shall be performed according to a standard plan and specifications to be prescribed by the board of county commissioners of the county wherein said crossing is situated, and the work of construction or repairing shall be approved by said board.

Duty of chairman of county commissioners.

SEC. 2. It is hereby made the duty of the chairman of the board of

county commissioners to at once notify the party or parties violating the provisions of this act to make such construction or repair as may be necessary; and, if such person or persons, firm, association, or corporation shall refuse or neglect to make the same for a period of five days, after receiving such notice, then it shall be the duty of the chairman of the board of county commissioners to immediately cause the necessary construction or repairing to be made according to said standard plan and specification, and to submit in duplicate to the board of county commissioners and the district attorney, itemized bills for the expense so incurred, which should be allowed and paid as other bills against the road fund of the district in which said construction or repairing is made, and, in case there be no moneys in the said fund, then out of any moneys in the general fund not otherwise appropriated.

Ditch owners liable.

SEC. 3. Any person, association, firm, or corporation, owning, leasing, operating, or controlling any flume, ditch, canal, or any aqueduct conducting water across any public road or highway in this state, or across any street or alley in any unincorporated town in this state, for domestic, mining, agricultural, or manufacturing purposes, shall be liable for the amount of the expenses incurred by the chairman of the board of county commissioners in the construction or repairing of the said bridge or culvert, to be recovered by a civil action.

Legal action commenced, when.

SEC. 4. It shall be the duty of the district attorney receiving such bill of expense, as provided in section 2 of this act, to immediately commence an action in any court of competent jurisdiction, for the recovery of such an amount as is set forth in the itemized bill of expense aforesaid, together with the cost of the suit.

Disposition of money collected.

SEC. 5. All moneys collected, after paying costs of suit, shall be returned and paid into the fund from which the original bill of expense named in section 2 of this act shall have been allowed and paid by the board of county commissioners.

Repeal—Exception.

SEC. 6. All acts and parts of acts in conflict with the provisions of this act are hereby repealed; *provided*, that nothing in this act shall be construed to repeal an act entitled "An act to protect public roads and highways from damage by water, and to provide a penalty for a failure to do so," approved March 18, 1911.

See "An act to provide a general highway law for the State of Nevada," Stats. 1917, 309, post.

PUBLIC LANDS

3064. The payments for the land are made by the entryman to the state, and the patent issued for the land is from the state to the entryman. The right to the use of the water, and not the land, is sold by the party perfecting the project to the actual settler. *Miller v. Thompson*, 40 Nev. 47 (160 P. 775).

3065. Composition of commission.

SEC. 2. The selection, management, and disposal of said land shall be vested in a commission consisting of the governor, the state engineer, and the surveyor-general, and which, for the purposes of this act, shall be

known as the commission of industry, agriculture and irrigation, and the surveyor-general is hereby designated as state register of lands under the Carey act. *As amended, Stats. 1915, 335.*

3068. A contract whereby plaintiff abandons public lands, on which he has located mining claims for a certain consideration and an agreement of defendant to make application for withdrawal under the Carey act of said land and other lands, and to appropriate and develop them thereunder, the same to be sold, and a fifth of the proceeds of sale to be paid the plaintiff, is void as impossible of performance, and made under a mutual mistake; said act not allowing the sale of withdrawn land by the one withdrawing it, but only development of an irrigation system and sale of waters therefrom to settlers, who make entry on the land and buy it from the state. *Miller v. Thompson, 40 Nev. 35, 46, 47 (160 P. 775).*

3071. See *Miller v. Thompson, 40 Nev. 35*, under section 3068.

3072. Time limit.

SEC. 9. All contracts shall state that the works covered by the contract shall begin within six (6) months of the day of the contract and that the construction shall be prosecuted diligently and continuously to completion, and that the cessation of work under a contract for a period of six months shall forfeit to the state all rights under said contract and the penal sum named in the bond; *provided*, that no property or right which was vested in the applicant or contractor at the date of the contract shall be forfeited; *and, provided also*, that in cases of contractors who, at the date of the application, own or have vested rights in water, and in a reservoir site, canals, or other irrigation works, the forfeiture shall extend only to such portions of the system unconstructed at the time of default and to the penalty of the bond given by such contractor. *As amended, Stats. 1919, 232.*

3088. Department created.

SEC. 25. There is hereby established as a department of the bureau of industry, agriculture and irrigation, as is or may be created by law, the department of Carey act lands, and which shall be in charge of the state register of lands under the Carey act, subject to the general supervision and control of the commission. Said state register may appoint a deputy and such clerical and other assistants as may be required in such department, at such compensation as the commission may fix. He shall be the custodian of all papers, documents, maps, and plats relating to such department, receive and receipt for all fees and payments required to be paid under the provisions of this act, or under any rule or regulation of the commission, and deposit the same with the state treasurer to the credit of the Carey act trust fund; conduct all correspondence relating to such department, perform such other duties as the commission may prescribe, and is hereby named as the authorized agent of the state to enter into and to execute, for and in behalf of the state, the agreement prescribed by the secretary of the interior binding the state in respect to the disposal of lands under the Carey act. For services performed under the provisions of this act said state land register shall receive no compensation. *As amended, Stats. 1915, 333.*

- 3196. Similar sections (Stats. 1873, 120) cited, *Southern Development Co. v. Endersen, 200 F. 273, 276.*

3200. Regulations as to purchase of land.

SEC. 5. Upon the application of any citizen of the United States, or any person who has legally declared his intentions to become such, over the age of twenty-one years, including females, to purchase lands not previously selected by the state, such applicant shall deposit with the state land register the amount necessary to purchase said lands, together with an affidavit,

in due form, by the applicant, or some other competent person, made before an officer having an official seal and legally authorized to administer oaths, that the lands described in the application are nonmineral in character, and such affidavit shall not refer to any lands not included in such application. The land register shall endorse upon each application the exact time of its receipt in his office, and shall certify to the state controller that such person is entitled to apply for the lands, describing the same as in the application, and said certificate shall state the grant of lands under which said application is made and the amount necessary to purchase the same. The controller shall thereupon issue his order directing the state treasurer to receive such amount, placing the same in the proper fund. The register shall at the same time certify to the treasurer said payment, which certificate shall be accompanied by the application and the amount necessary to purchase, and upon receipt of the order from the controller, the treasurer shall issue his receipt in duplicate, describing the lands applied for, and he shall, at the same time, enter in his abstract of applications the name of the person so applying, description of land, number and date of receipt, and amount paid thereon. Upon return of the application with the treasurer's receipt to the land office, the register shall file the same, and take prompt measures at the United States land office of the district in which such lands are situated to select for the state the lands described in such application. If, during a period of sixty days after the filing of any application, the state land register shall remain unable so to select any of the lands therein described, on account of conflicting entries or reservations in the United States land office, he shall cancel such application, so far as it concerns the unselectable lands therein described, and at once certify to the controller and treasurer each that such applicant is entitled to the amount paid by him or her on said unselectable lands, and the controller shall draw his warrant upon the proper fund for the amount due such applicant, and the same shall be paid by the treasurer. The state land register shall, at the same time, notify the applicant of such cancelation, and that the amount deposited thereon is subject to withdrawal, as provided by law, and no subsequent application for lands embraced in such canceled application shall be certified by the state land register until due official notice shall have been received from the intending applicant that the lands in question are subject to selection. Whenever purchase can be completed, in whole or in part, upon lands applied for, as in this section provided, the land register shall certify the same to the controller and treasurer each, and shall at once proceed to complete such sale. Should the controller, upon receipt of such certificate, find that any payment had been wrongfully apportioned, he shall issue his order directing the treasurer to transfer such amount to its proper fund. If, by reason of the nonapproval of the lands to the state, or other cause, the contemplated sale cannot be completed, in whole or in part, then, upon the demand of the applicant, or his or her legal agent or assignee, the land register shall certify to the controller and treasurer each that such applicant is entitled to the amount paid by him or her, and the controller shall draw his warrant upon the proper fund for the amount due such applicant, and the same shall be paid by the treasurer. *As amended, Stats. 1917, 416.*

3201. Duties of various officers.

SEC. 6. Upon the application of any person, as defined in section five of this act, for the purchase of land after the state has obtained title thereto, should such person be entitled to purchase, the state land register, state controller, and state treasurer shall proceed as provided in section five of this act. *As amended, Stats. 1917, 418.*

3203. Regulations as to sale of lands.

SEC. 8. In addition to the mode and manner of the sale of state lands, the state land register is hereby further empowered to sell and dispose of any agricultural or grazing lands, payable as hereinafter specified—that is to say, with any person so defined in section five of this act, wishing to purchase lands under the provisions of this section, and who shall have made proper application therefor, and duly established his or her right to purchase under the provisions of this act, the state land register is hereby authorized and required to enter into contract to sell such lands, upon receipt of the list certifying the approval of such lands to the state, upon the following conditions, to wit: One-fifth of the purchase price to be paid upon application, the remainder of the purchase price to be paid in fifty years from the date of the contract, with the interest at the rate of six per cent per annum, interest payable annually; *provided*, that the applicant, or his heirs or assigns, may, at any time prior to the maturity of such contract, make full payment of the principal and interest due under the terms of such contract and receive patent in the name of the applicant. All such contracts shall be entered into writing with the person so purchasing, in which the conditions shall be distinctly expressed, that upon the failure to pay the annual interest or principal when due, as stipulated, the land shall immediately thereafter be subject to sale in the same manner and under the same conditions as though no such prior contract of sale had been made; *provided*, that the state land register is hereby authorized to accept an overdue interest payment on any contract during the period of one year from the date required for such interest payment; but when application is made for any portion of the land described in any contract on which the annual interest payment is overdue, it shall be the duty of the state land register to immediately declare such contract forfeited, and to accept and certify such application, and the remainder of the land embraced in such forfeited contracts shall unconditionally revert to the state; *provided further*, that no application shall be received for any part of the lands embraced in such contract within thirty days from the date when said interest payment becomes overdue unless an abandonment to said contract be filed by the contractor, assignee, or agent. All payments of interest and for sales of lands shall be paid to the register, who shall certify the same and the terms thereof to the controller and treasurer, and the controller, upon the receipt of such certificate, shall issue his order to the treasurer, apportioning the interest to the fund to which it may belong, as in section five of this act, and upon payment being made by the register of the amount specified in the order, the treasurer shall issue his receipts in duplicate for each payment and deliver the same to the register, who shall file the original and deliver the duplicate to the payee by mail or otherwise, and when full payment shall have been made, patent shall issue to the purchaser as provided in section sixteen of this act. No timber land shall be sold unless the whole purchase price shall be paid at the time of application. *As amended, Stats. 1917, 418.*

3204. Previous contracts may remain.

- SEC. 9.** All contracts in existence at the time of the passage of this act
- may remain under the same conditions as stipulated in said contracts; or the unpaid principal may be made the subject of a new contract under the provisions of the foregoing section, to be paid within fifty years from the date of such new contract, with the interest at the rate of six per cent per annum at the option of the holder of such contract; *provided*, that such contract shall be made only on the day when the annual interest becomes due; and *provided further*, that the applicant shall pay to the state land register a fee of one dollar for each and every new contract so issued; said

fees shall be paid to the state treasurer for the state school fund. The state land register is hereby authorized and empowered to make such rules and regulations as will carry out the provisions of this act. *As amended, Stats. 1917, 419.*

3215. Certain expenses paid, how.

SEC. 21. All claims for services, or supplies of whatever kind, or for expenses authorized by and legitimately incurred in carrying out any of the provisions of this act, except the salaries of the state land register, deputy and clerks fixed by law, shall be presented by itemized bills to the state board of examiners; and when any such claim shall be allowed by said board, they shall endorse thereon their approval of the same and direct out of what fund or funds the claim so allowed shall be paid; *provided*, that payment of all such allowed bills, salaries of the register, deputy and clerks shall be made from the state permanent school fund arising from the sale of lands. *As amended, Stats. 1917, 419.*

Certain expenses paid from school fund.

SEC. 21A. On the first day of each quarter, or as soon as practicable thereafter, the secretary of state or furnishing board of supplies and the superintendent of state printing shall each present to the board of examiners an itemized account of all supplies of whatever kind furnished the state land office during the preceding quarter, and upon the allowance of said claims, or any part thereof, the said board shall direct the state controller and the state treasurer to transfer, and they shall transfer, said amounts from the state school fund to the general fund of the state. The intention of this section is, that all expenses incurred in the sales of state lands shall be paid from moneys derived from such sales. *Added, Stats. 1917, 419.*

An Act providing for the reclamation, improvement and equipment of lands within the state for rural homes for soldiers, sailors, marines and other loyal citizens; providing for federal and other cooperation in the same, and for the reimbursement of moneys so expended; creating a reclamation and settlement board; defining its powers and duties; empowering the board to appropriate unappropriated public waters; providing a procedure for the temporary withdrawal of unappropriated waters from appropriation by other persons; declaring the use of water for reclamation and settlement projects a more necessary public use than for any other project or purpose and authorizing the exercise of the right of eminent domain for the acquisition thereof; providing a procedure for determining the value of unperfected permits to appropriate waters; making an appropriation therefor; creating a reclamation and settlement fund; providing for a state loan; levying a state tax; authorizing the establishment of reclamation and settlement districts for assessment purposes; creating a reclamation loan interest and redemption fund, and for other purposes.

Approved March 28, 1919, 343

Statement of objects of act.

SECTION 1. The objects of this act are: *first*, in recognition of military service, to provide, improve and equip rural homes for soldiers, sailors, marines, and others who have served with the armed forces of the United States in the European war and other wars of the United States, including former American citizens who have served in Allied armies against the Central Powers and have been repatriated, and who have been honorably discharged; and, *second*, to provide and improve rural homes for other loyal citizens; and to accomplish such purposes by cooperation with the

agencies of the United States engaged in work of a similar character as herein provided. The act may be cited as "The Nevada Reclamation and Settlement Act."

Creating a reclamation and settlement board—Membership—Attorney-general to be legal advisor of board.

SEC. 2. For the purpose of this act a reclamation and settlement board is hereby created composed of the governor and state engineer as ex officio members and three other members to be appointed by the governor, each for the term of four years. Each appointed member shall receive \$10 the day while actually engaged on work of the board, as other state officers are paid, and necessary expenses. The governor shall be the chairman of the board and the attorney-general shall be its legal advisor and represent the board in any suits or action which may arise out of the discharge of its duties.

Appropriation—Provisions for reimbursement.

SEC. 3. There is hereby created the "Reclamation and Settlement Fund" in the state treasury, and for the purposes of carrying out the provisions of this act there is hereby appropriated the sum of one million dollars which shall in part be transferred from any moneys in the general fund not otherwise appropriated and in part provided by a state loan and which shall be covered into said reclamation and settlement fund as follows: Not exceeding two hundred and fifty thousand dollars for the first year, not exceeding five hundred thousand dollars total during the first two years, not exceeding seven hundred and fifty thousand dollars total during the first three years and not exceeding one million dollars total during the first four years from and after the date of the passage of this act; *provided*, none of said fund or funds shall be expended except in cooperation with the United States, the latter to furnish and expend on any project at least an equal sum to the state and in cooperation with the state; *and provided further*, that contracts with irrigation districts can only be made in cooperation with the United States and when the United States expends under such contracts an amount at least equal to that by the state and the amount furnished and expended by the board for the state to be fully secured by duly authorized and issued bonds of said irrigation district.

Board shall satisfy itself of the practicability of projects undertaken—May employ expert assistance—May cooperate with the United States or with irrigation or drainage associations or districts.

SEC. 4. The board shall satisfy itself of the practicability of each project to be undertaken hereunder, and for such purpose may employ expert assistance and make necessary investigations. Projects may be undertaken in cooperation with the United States or with duly organized irrigation or drainage associations or districts in cooperation with the United States, involving the reclamation and settlement of lands within the state by water storage, irrigation or drainage systems, development of underground waters and land leveling. The board may acquire in the name of the state by purchase, gift, or the exercise of the power of eminent domain, all lands and other property needed for the purposes hereof, and may take title in trust. The board may sell any land or other property acquired hereunder found not to be required for any project. The board may also utilize any lands of the state not under contract of sale or that hereafter may be granted the state for the purposes of this act.

Authorizing contracts with the United States and others for land reclamation and settlement.

SEC. 5. The board is authorized to contract with the United States

pursuant to acts of Congress and the rules and regulations thereunder for land reclamation, settlement and related purposes. For the purposes of general cooperation with the federal government hereunder, the board may also contract with other states, and with municipal and quasi-municipal corporations, irrigation and drainage associations or districts and private corporations and individuals.

Further contractual powers and duties of the board.

SEC. 6. For the purposes of this act, the board may also, in cooperation with the United States, or with duly organized irrigation or drainage associations or districts in cooperation with the United States as hereinbefore provided, undertake subdivision of land, supervision of settlement, the selection of settlers, the supervision of loans, the rejection of applicants for allotments, the collection of moneys, the operation and maintenance of the projects undertaken, and may perform such other acts as may be necessary to effectuate the purposes of this act.

Board may lease lands—Dedicate lands for certain public purposes—Establish, develop and open for sale town sites.

SEC. 7. The board may also lease or assent to the lease of any lands pending receipt of application for the purchase thereof, may dedicate lands for schools, churches, roads, cemeteries, and other public purposes, and may establish, develop and open for sale such town sites as may be desirable or authorized by contract with the United States.

Providing for reimbursement of moneys expended under this act.

SEC. 8. The board, in cooperation with the United States, is authorized and required to and shall obtain security by lien, contract or otherwise for the reimbursement of moneys expended hereunder by the state, or by the state and the United States jointly, upon such plan of amortization or other method of reimbursement as the board may determine or agree to. The proceeds of all operations under this act shall be covered into the state reclamation and settlement fund and shall be subject to disbursement for administration and for the payment of defaulting taxes and assessments as provided in section nine, and not otherwise, and all said proceeds in excess thereof shall be transferred semiannually by the controller to the general fund.

Contract lands subject to taxation—Board may establish projects as reclamation and settlement districts.

SEC. 9. State lands utilized and other lands acquired pursuant to this act shall be subject to state, county and local taxation and to assessment for reclamation and improvement purposes from the date of the execution of the contract for the purchase thereof by settlers upon any project undertaken hereunder. The board, in its discretion, may establish any project as a reclamation and settlement district by filing with the county recorder of the county in which situated, or if situated in more than one county, with the county recorders in all counties in which in part situated, the title by which such project is to be officially known and designated and a certified map showing the boundaries and legal subdivisions thereof. Thereafter the board may annually file with the board of county commissioners of each such county on or before the first Monday in March a certified statement of the names of all contract purchasers of lands within said district in each county with the legal subdivisions of lands severally under contract to each and the amount of any special assessment for reclamation and improvement purposes to be severally assessed against each, whereupon it shall be the duty of the said board of county commissioners to order such special assessments to be levied, assessed and collected

at the time and in the manner that other taxes are levied, assessed and collected. The proceeds thereof shall be covered into a special fund in the county treasury and shall be subject to transfer to the state treasury on the order of the state controller in like manner as other state moneys collected by the county are transferred, and any portion thereof not so ordered to be transferred to the state treasury shall be kept in such county fund and shall be subject to disbursement on certificates of the reclamation and settlement board, approved by the board of county commissioners, when the county auditor shall draw his warrant and the county treasurer pay the same. If the contracting purchaser shall fail to pay such tax or special assessment, the same may be paid from the reclamation and settlement fund and charged to the purchaser with interest at the rate of ten per cent per annum, subject to forfeiture of contract for nonpayment in accordance with such terms and conditions as the board may impose.

Board must make annual report.

SEC. 10. The board shall make and publish an annual report with a full statement of its operations and the results of its investigations and experience resulting from operations under this act, together with recommendations for legislation, and shall furnish a copy of its report to the secretary of the interior.

General authority and powers granted—May appropriate public waters—May cause same to be withdrawn from appropriation—Right of eminent domain may be exercised—Procedure for determining value of unperfected permits.

SEC. 11. The board is hereby authorized to adopt a seal and to perform such further acts, not specifically mentioned herein, as may be necessary or proper to accomplish the purposes of this act and said board is empowered to adopt and enforce such rules and regulations governing the performance of its duties and the administration of the provisions of this act as may be necessary or proper and such rules and regulations where not inconsistent with the provisions of law shall have the force and effect of law.

For the purpose of effectuating the objects of this act the said board shall have the power to appropriate, in its name and in the manner provided by law for the appropriation of water by others, any of the unappropriated waters of this state. Said board is further empowered in the interest of public welfare to withdraw from appropriation by others, including appropriation for power purposes, and to reserve for appropriation by itself in behalf of the State of Nevada, the unappropriated waters of any surface or underground stream, lake, spring or other source of water supply. Such withdrawal and reservation shall be made in the following manner: When the board has considered and has in contemplation any reclamation project which in the judgment of the board will require the use of the unappropriated waters of any such source of water supply, the board may cause to be entered on its minutes an order reciting such facts and directing its proper officers to take the necessary action to withdraw from appropriation by others and reserve for appropriation by the board, the unappropriated waters of said source of water supply. Thereupon the proper officers of said board shall file in the office of the state engineer the proclamation of the said board signed by its proper officers and bearing an impression of its seal, reciting the said order of the board and proclaiming such withdrawal and reservation of the unappropriated waters of said source of water supply. After the filing of such proclamation in the office of the state engineer, and while such proclamation remains effectual, all applications for the use of water from such source of supply not previously approved by the state engineer, except such as may be made

by the board for the purposes of such reclamation project, or made by others with the written consent of the board, shall be deemed detrimental to the public welfare and the public interests and shall be rejected by the state engineer. No such proclamation shall remain effectual for a longer period than three years from the date of filing, nor shall it be renewed for one year after the expiration thereof; *provided*, that the board, as soon after filing such proclamation as its other plans and its facilities and finances will admit, shall investigate the project for which said proclamation was filed, and if it determines to abandon the same shall immediately cause to be executed by its proper officers and over its seal and to be filed with the state engineer a withdrawal of such proclamation and thereupon the withdrawal and reservation of the right to appropriate such waters shall cease to be effectual.

The use of water for reclamation and settlement projects under this act, whether for power, irrigation or other purposes, is hereby declared to be a more necessary public use than the use of water for any other project or purpose, and whenever any water the right to the use of which is now vested in any person or for which any person now holds a permit from the state engineer, may be needed for the purposes of this act, the said reclamation and settlement board may acquire the right to the use of such water by purchase or the exercise of the right of eminent domain in accordance with the provisions of law concerning the exercise of such right. If it shall appear in any action brought by said board to condemn the rights of any person under an unperfected permit issued by the state engineer, that the water covered by said permit has not been actually applied to a beneficial use, or a reasonable sum expended in contemplation of such purpose, then on the question of the value of the rights under said permit the burden shall be on the permittee to prove, if he so claims, that he intends to apply said water to a beneficial use, that said permit is not held merely for the purpose of sale or speculation, that the permittee has the financial ability and means to construct the proposed works or has made an actual contract to sell his rights under such permit to a vendee who has the financial ability and the bona-fide intent to complete said contract and construct said works. In all cases the possibility of making or procuring an advantageous sale of the rights of such permittee is hereby declared to be too remote to be considered as an element in determining the value of such rights.

The said board after acquiring the right to use any water in connection with any project may, in the course of the development or administration thereof or after its completion, assign and transfer such right or any part thereof to any applicant complying with the rules of the board or otherwise satisfying it that the water will be put to a beneficial use.

**Disbursements from the reclamation and settlement fund, how made—
Administration and investigational expenditures limited.**

SEC. 12. Disbursements from the reclamation and settlement fund shall be on certificates of its chairman or acting chairman and secretary, approved by the state board of examiners, when the state controller shall draw his warrant and the state treasurer pay the same; *provided*, that all such claims shall have first been duly authorized and approved by the board at a regular or special session; *and provided further*, that not exceeding ten per cent (10%) of the amount appropriated in any one year shall be available for administration expenses, inclusive of investigational work in determining the practicability of projects; *and provided further*, such amounts so expended to be charged up to the respective projects as expense of development. No funds shall be disbursed except in cooperation with the United States as herein provided.

Providing for a state loan and for the payment of the interest and principal thereof.

SEC. 13. For the purpose of providing the funds appropriated in section three of this act the sum of one million dollars is hereby authorized to be borrowed, or so much thereof as may be necessary, of which sum not exceeding two hundred and fifty thousand dollars shall be borrowed the first year, not exceeding five hundred thousand dollars total shall be borrowed during the first two years, not exceeding seven hundred and fifty thousand dollars total shall be borrowed during the first three years and not exceeding one million dollars total shall be borrowed during the first four years from and after the date of passage of this act, less any moneys in the general fund transferred to the state reclamation and settlement fund as provided in section three. Said loan shall bear interest at the rate of not to exceed five per cent per annum payable semiannually on the first days of January and July of each year and the principal shall be payable at any time within twenty years from the date of passage of this act, and for the regular and prompt payment of said interest and principal the faith and credit of the state is hereby pledged. The provisions of this act in respect to the issuance of bonds shall be executed under the direction of a commission consisting of the governor, state controller and state treasurer. On certification by the reclamation and settlement board that the whole or any part of the appropriation provided for in section three of this act is required, accompanied by a statement of the estimated amount and purposes of the proposed expenditures, and if the same be within the provisions of this act, said commission shall provide immediately for a state loan in the amount so required, less any part thereof which may be transferred from the general fund, and shall deposit the proceeds of such loan into the reclamation and settlement fund.

Providing for the issuance of bonds and levying a tax for bond interest and redemption—Creating the reclamation loan interest and redemption fund—Authorizing transfer of excess moneys therefrom to the general fund.

SEC. 14. Said commission shall cause to be prepared the bonds used in pursuance of this act, and each bond shall state in substance that the State of Nevada will pay to the holder thereof the amount of the bond within twenty years from the date of the passage of this act with interest at the rate of not to exceed five per cent per annum. Said bonds shall be of the denominations as the commission may prescribe, shall be payable in gold coin of the United States, shall be numbered in sequence, each bond bearing a different number, and when retired shall be retired in such sequence. Said bonds shall be signed by the governor, endorsed by the state treasurer, countersigned by the state controller and authenticated by the great seal of the state. Beginning January 1, 1924, one-fortieth ($\frac{1}{40}$) of the total amount of said bonds issued shall be retired and each year thereafter the amount of bonds retired shall be increased by five thousand dollars over the amount of bonds retired the year previous, for sixteen years, or until the total issue of bonds shall have been retired. There shall be levied and collected for the fiscal year commencing January 1, 1919, an ad valorem tax of one-half of one cent, for the fiscal year 1920 an ad valorem tax of one cent, for the fiscal year 1921 an ad valorem tax of one and one-half cents, for the fiscal year 1922 an ad valorem tax of two cents and for the fiscal year 1923, and annually thereafter, an ad valorem tax of three and one-half cents on each one hundred dollars of taxable property in the state, including the net proceeds of mines, and all moneys derived from said taxes shall be covered into the reclamation loan interest and redemption fund in the state treasury, hereby created for such purpose, and are hereby

specifically appropriated for the payment of the interest and the redemption of the principal of the bonds authorized by this act; *provided*, that any accumulation of moneys in such fund in excess of the full amount required to satisfy the interest and redemption of said bonds as the same currently become due and payable, on order of the commission may be transferred by the state controller to the general fund. It shall be the duty of the state controller to draw his warrant for the payment of the interest on said bonds and for their redemption at maturity as herein provided, and the state treasurer shall pay the same, and when so retired said bonds shall be canceled and made void by said commission.

PUBLIC SAFETY

3233. Cited, *Gill v. Goldfield Con. Mines Co.*, 43 Nev. — (176 P. 785).

An Act to compel the fencing or safeguarding of poisonous solutions and compounds, providing damages for injury resulting from failure to comply and matters relating thereto.

Approved March 17, 1919, 74

Poisonous liquids to be fenced.

SECTION 1. Any person who shall maintain, dump, turn or flow or cause to be maintained, turned or flowed, any solution, compound, waste, water, or anything of a liquid nature poisonous or injurious to or which might or does kill live stock, into an open ditch, cut, flume, pond, reservoir or any place unless such ditch, cut, flume, pond, reservoir or place is inclosed by fence or otherwise safeguarded sufficiently to prevent live stock gaining access thereto shall be liable for all damages caused by or the result of said act or acts.

Penalties.

SEC. 2. Any person violating section 1 of this act or who fails to properly inclose and safeguard any solution, compound, waste, water, or anything of a liquid nature injurious to or which might or does kill live stock, maintained, dumped or flowed by him, shall be liable to the owner of live stock affected for all damages, the result of his failure to inclose and safeguard the said solution, compound, waste, water, or anything of a liquid nature, together with costs of suit and counsel fees in a reasonable amount, to be fixed by the court trying an action therefor.

Words defined.

SEC. 3. The words "person" and "persons," as used in this act, mean and shall be construed to mean and include person, persons, individuals, firm, company, copartnership, an association, a corporation, and the plurals of each.

PUBLIC SCHOOLS

3242. Duties of state board of education.

SEC. 4. The powers and duties of the board shall be as follows:

1. To prescribe and cause to be enforced the courses of study for the public schools, such courses to contain in the seventh and eighth grades, among other things, business forms and elementary bookkeeping or some features of industrial work; and in the high-school grades, provision for full commercial work and industrial work suitable for boys and girls; *provided*, that schools of the first class may have modified courses of study, subject to the approval of the state board of education.

2. To adopt lists of books for district libraries; *provided*, that boards of trustees in districts of the first class may make additional adoptions; *and provided further*, that such books shall not contain or include stories in prose or poetry whose tendency would be to influence the minds of children in the formation of ideals not in harmony with truth and morality.

3. To revoke or suspend for immoral or unprofessional conduct, evident unfitness for teaching, or persistent defiance of and refusal to obey the laws of the state, or the rules and regulations of the state board, or of the state superintendent defining and governing the duties of teachers, any state diploma or any state certificate.

4. To have done by the state printer any printing required by the state board, such as state courses of study, the proceedings of the teachers' institutes, blank forms, and such other matter as the state board may require; *provided*, that text-books are not included in such courses of study.

5. To adopt and use in authentication of its acts an official seal.

6. To keep a record of its proceedings, which shall be published biennially in the report of the superintendent of public instruction.

7. To designate some monthly school journal as the official organ of the department of education. The publishers of such journal shall mail one copy of every number of such journal to the clerk of every school district in the state and shall file an affidavit with the superintendent of public instruction showing that such copies have been so mailed. The county treasurer of every county, before notifying the superintendent of public instruction of the county fund to be apportioned in the July apportionment, shall set aside an amount equal to one dollar for each and every school district of the county, and this fund shall be known as the school journal fund. The amount certified to the superintendent of public instruction for apportionment shall not include the school journal fund so set aside. The superintendent of public instruction shall draw his orders annually in favor of the publishers of such school journal for an amount equal to one dollar for each and every school district in each county to which the school journal has been sent in accordance with this section, to be paid out of the school journal fund, and the county auditor shall immediately draw his warrant in favor of the publishers of such journal for an amount equal to that named in aforesaid order, to be paid out of the school journal fund. As amended, *Stats. 1913, 103.*

An Act to facilitate the building of rural schoolhouses and to standardize them by supplying plans and specifications to rural school boards, and other matters properly connected therewith.

Approved March 23, 1917, 307

Duty of board of education.

SECTION 1. It shall be a duty of the state board of education to have prepared plans and specifications for rural schoolhouses on standard lines

of school architecture as to size, lighting, heating, ventilation, and general sanitation; and the trustees of rural schools needing new schoolhouses shall be supplied with such plans and specifications when the same are ready for distribution upon request of boards of school trustees.

3244. Duties of superintendent of public instruction.

SEC. 6. The superintendent of public instruction shall have power, and it shall be his duty :

1. To visit each county in the state at least once each year for the purpose of conducting institutes, visiting schools, consulting with the school officers, and addressing public assemblies on subjects pertaining to the schools; and the necessary traveling expenses incurred by the superintendent in performance of such duties, such traveling expenses to include the cost of transportation and board while absent from his place of residence, shall be allowed, audited and paid out of the general fund, in the same manner as claims upon said fund are now allowed, audited and paid; *provided*, that the sum so expended in any one year shall not exceed one thousand dollars;

2. To apportion the state distributive school fund;

3. To apportion the county school fund of each county among its various districts;

4. To report to the governor biennially, on or before the first day of December of the years preceding the regular session of the legislature. The governor shall transmit said report to the legislature; and whenever it is ordered published the state printer shall deliver a sufficient number of copies to the superintendent, who shall distribute the same among school officers of the state and of the United States. Said report shall contain a full statement of the condition of public instruction in the state; a statement of the condition and amount of all funds and property appropriated to the purpose of education, the number and grade of schools in each county; the number of children in each county between the ages of six and eighteen years of age; the number of such attending public schools; the number attending private schools; the number attending no schools; the number under six years of age; the number between eighteen and twenty-one years of age; the amount of public-school moneys apportioned to each county; the amount of money raised by county taxation, district tax, subscription, or otherwise, by any city, town, district, or county, for the support of schools therein; the amount of money raised for building schoolhouses; a statement of plans for the management and improvement of public schools; and such other information relative to the educational interests of the state as he may think of importance;

5. To prescribe suitable rules and regulations for making all reports and conducting all necessary proceedings under this act, and to furnish suitable blank forms for the same; to cause the same, with such instructions as he shall deem necessary and proper for the organization and government of schools, to be transmitted to the local school officers, who shall be governed in accordance therewith. He shall prepare a convenient form of school register for the purpose of securing accurate returns from the teachers of public schools, and shall furnish each school district in the state with such registers. He shall prepare pamphlet copies of the school law and all amendments thereto, and shall transmit a copy thereof to each school trustee, school-census marshal, and school teacher in the state;

6. To convene a state teachers' institute biennially, in the even-numbered years, in such place and at such time as he may deem advisable. It shall be his further duty to convene five district teachers' institutes in the various sections of the state biennially, in the odd-numbered years, in such places and at such times as he may deem advisable. He shall engage such

institute lecturers and teachers as he shall deem advisable, and shall preside over and regulate the exercises of all state and district institutes. No institute shall continue less than four nor more than ten days. The expenses incurred in holding such institute shall be paid out of the state general fund; *provided*, that the amount for the state institute shall not exceed five hundred dollars, nor the amount of any one district institute two hundred and fifty dollars, and the state controller is hereby authorized and directed to draw his warrants for the same upon the order of the superintendent of public instruction. All teachers shall be required to attend the district institutes held in the supervision districts in which they may be teaching, respectively, unless they shall be excused for good cause by the superintendent of public instruction, and without loss of salary for the time thus employed;

7. To call, with the approval of the board of county commissioners, a county teachers' institute in any county at such time and place as in his judgment will best subserve the educational interests of the county, and to preside over and regulate the exercises of the same. The expenses of such institute shall be paid out of the county general fund of the county in which such institute is held; *provided*, that the board of county commissioners shall authorize such institute upon the application of the superintendent of public instruction; *and provided*, that such expenses shall not exceed the sum of one hundred dollars. All teachers shall be required to attend any county institute held in the counties in which they shall be teaching, respectively, unless excused for good cause by the superintendent of public instruction, and without loss of salary for the time thus employed;

8. To call meetings of the state board of education in January and June of each year, and at such other times as he shall deem proper, or when two members of said board shall request a meeting;

9. To perform such other duties relative to the public schools as may be prescribed by law;

10. To have done at the state printing office any printing required in the performance of his duties;

11. To require a written report from each deputy superintendent on the first day of October, the first day of January, the first day of April, and the first day of July of each school year. Such reports shall contain any information or facts that the superintendent of public instruction may require;

12. To arrange blank forms, including school registers, for teachers' contracts, and supply the same to school trustees and teachers;

13. The superintendent of public instruction shall, at the expiration of his term of office, deliver to his successor all property and effects belonging to his office, and take a receipt for same. *As amended, Stats. 1915, 508.*

An Act to promote efficiency in the public schools by payment of transportation expenses of teachers to and from teachers' institutes.

Approved March 14, 1917, 173

Transportation of teachers to institutes.

SECTION 1. It shall be the duty of school boards whenever a teachers' institute is called for the county or supervision district in which their respective school districts are located to pay the actual necessary transportation expenses of any teacher or teachers under their charge to and from such institute or institutes out of the county school fund of their respective school districts, unless such teacher or teachers are excused for cause from attending such institute by legally authorized authority; *provided*, that such attending covers the entire session of such institute or institutes;

and, *provided further*, that such teacher or teachers shall avail themselves of the reduced rates granted by railroad and stage companies.

Same.

SEC. 2. School boards are authorized under the same conditions as named in section one of this act to pay a part or all of the transportation expenses of any teacher or teachers attending any state teachers' institute; *provided*, that such attending covers the entire session of such institute.

Construction of act.

SEC. 3. The provisions of this act are to be construed as supplementing any other legal provisions now in force in reference to teachers' institutes and as not in conflict with them.

3247. Deputy superintendents, how appointed—Qualifications.

SEC. 9. The state board of education shall, on or before the first Monday in May, 1911, and each fourth year thereafter, appoint one deputy superintendent of public instruction for each supervision district as herein provided for, and such appointee shall, at the time of his appointment and during his term of office, be a bona-fide resident of the district for which he is appointed. Such appointee shall take office on the first Monday in September and shall serve for a period of four years or until his successor shall have been appointed and shall have qualified. In case a vacancy shall occur in the office of deputy superintendent of public instruction, the state board of education shall, in like manner, make an appointment for the unexpired term. The deputy superintendents of public instruction shall devote their entire time to school supervision and shall not engage in any other work while holding this office. *As amended, Stats. 1915, 510.*

3251. Salaries and expenses of deputy superintendents.

SEC. 13. The compensation of each deputy superintendent of public instruction is hereby fixed at two thousand four hundred dollars per annum, and shall be paid out of the general fund of the state as the salaries of other state officers are paid. All claims for the traveling expenses, including the cost of transportation and cost of living, of each deputy superintendent of public instruction while absent from their places of residence, in the performance of their duties as district deputy superintendents of education, together with necessary office expenses, shall be paid from the general fund of the state, whenever such claims shall be allowed by the state board of examiners; *provided*, that not more than nine hundred dollars shall be paid from the general fund of the state in settlement of claims for such traveling expenses of any deputy superintendent of public instruction during any one year, and not more than five hundred dollars shall be paid from the general fund of the state in settlement of claims for such office expenses of any deputy superintendent of public instruction for any one year. *As amended, Stats. 1919, 159.*

3251. Sections 66-70 of the general appropriation act of 1913, making provisions "for actual traveling expenses" for each of the five deputy superintendents of public instruction for the years 1913 and 1914, should be read in connection with this section. The fact that the word "actual" was used in the general appropriation act of 1913, in contradistinction to the provisions of previous general appropriation acts, will not be deemed sufficient to manifest an intent upon the part of the legislature to limit the purpose of such appropriation while the amount appropriated is the same as made in previous appropriation bills, and as recommended to the legislature by the state controller as required by law. *State ex rel. Abel v. Eggers*, 36 Nev. 373, 375 (136 P. 100).

Under this section and Stats. 1915, 234, sec. 28, it was held that a deputy superintendent of public instruction could not recover under this section for traveling expenses incurred

during the year 1916; such act being superseded by the appropriation of the act of 1915. *McCracken v. State*, 41 Nev. 49, 54, 56-67 (167 P. 1001).

It was also held that this section was sufficient to make appropriation for claims arising under it, and that, as the legislature made no appropriation in 1917, a deputy superintendent of public instruction could recover under this section for expenses for the year 1917. *Id.*

*An Act giving the superintendent of public instruction authority to
appoint a deputy in his office.*

Approved March 25, 1919, 159

Office deputy authorized—Salary.

SECTION 1. The superintendent of public instruction shall have power under his hand and seal, to appoint one deputy in his office who shall have the same qualifications required of deputy superintendents; the deputy so appointed shall perform all the work required by the state teachers' retirement salary fund board in compliance with the act governing the same, assist in the work of the office, and do such work as the state board of education or the state superintendent may direct under the laws of the state. The salary of such deputy shall be two thousand four hundred (\$2,400) dollars per annum; and said deputy shall be allowed not to exceed five hundred (\$500) dollars per annum, for actual traveling and living expenses in the performance of his duties while absent from his place of residence. Said salary and expenses shall be paid in the same manner and from the same fund as those of the superintendent of public instruction are paid.

3255. Certificates of teachers.

SEC. 17. All teachers' certificates and life diplomas shall be granted by the state board of education, and said board shall grant only those classes and grades described in this act; *provided*, that deputy superintendents of public instruction may issue temporary certificates in accordance with the regulations of the board and on conditions hereinafter named; *and provided further*, that all teachers' certificates previously issued by legally constituted authorities shall remain valid for the time and under the conditions of the original issue unless revoked in accordance with law. In case of the renewal of any grammar-grade certificate now in force, an elementary certificate of the first grade shall be issued instead of said grammar-grade certificate. *As amended, Stats. 1913, 156.*

3261. Grades of certificates.

SEC. 23. Teachers' certificates in this state shall be:

1. High school, authorizing the holder thereof to teach in any high school or elementary school in the state; *provided*, that after September 1, 1916, no one shall be entitled to teach the regular elementary-school subjects unless he holds an elementary certificate;

2. Elementary, authorizing the holder thereof to teach in any elementary school in the state; *provided*, that no teacher shall be eligible to act as principal of an elementary school unless he or she holds an elementary certificate of the first grade;

3. Special, authorizing the holder to teach such special branches of learning, and in such grades, as are named in the certificate;

4. Temporary, authorizing the holder to teach such branches of learning, and in such grades and school districts, as are named in the certificate. *As amended, Stats. 1915, 377.*

3262. High-school certificate—Renewed, how.

SEC. 24. The high-school certificate shall be valid for four years from

the date of issuance and shall be issued on examination in the following subjects: (a) English grammar, spelling, arithmetic, geography, English literature, general history, history of the United States, civil government, current events, algebra, plane geometry, physics, and history and methods of teaching; (b) any one of the following foreign languages: Latin, French, German, Spanish; (c) and any three of the following additional subjects: Rhetoric, English history, solid geometry, physical geography, chemistry, botany, and zoology; *provided*, that no high-school certificate on examination shall be issued to any person whose general average is less than ninety per cent; *and provided further*, that such certificate shall not be issued to any person under twenty years of age. Credit may be allowed to applicants for any subject in the above list satisfactorily completed in a standard college, or to applicants holding a Nevada elementary certificate of first grade for a standing of ninety or more made in any of the above subjects as shown on such elementary certificate and record thereof on file in the state superintendent's office. The high-school certificate may be renewed by the state board of education according to such rules and regulations as the board may prescribe. *As amended, Stats. 1913, 156.*

3263. Elementary certificate, first grade.

SEC. 25. The elementary-school certificate, first grade, shall be valid for three years from the date of issuance, and shall be issued upon examination in the following subjects: Spelling, reading, writing, English grammar, mental arithmetic, written arithmetic, physiology and hygiene, history of the United States, geography, general history, drawing, music, business forms, civics, current events, and theory and methods of teaching; *provided*, that such certificate shall not be issued on examination to any person whose general average is less than eighty-five per cent or whose grade is less than sixty-five per cent in any one subject. The elementary certificate, first grade, shall not be issued to any person under twenty years of age nor to any person who has had less than sixteen months of successful experience in teaching. Such certificate may be renewed by the state board of education according to such rules and regulations as the board may prescribe.

Any person who shall at any regular examination make a grade of eighty-five per cent or more in any subject or subjects shall receive credit for such subject or subjects toward a first-grade elementary certificate; and the state board of education may allow credits for satisfactory work done by applicants for certificates on examination, in a standard summer school, in determining their per cent standing in any subject or subjects. *As amended, Stats. 1913, 157.*

3264. Elementary certificate, second grade.

SEC. 26. The elementary certificate, second grade, shall be valid for two years from the date of issuance and shall be issued upon examination in all subjects required for the first-grade elementary certificate; *provided*, that a second-grade elementary certificate shall not be issued to any person whose general average is less than seventy-five per cent or whose grade is less than sixty per cent in any one subject; *and, provided further*, that county normal elementary certificates of the second grade shall be issued to graduates of the county normal-training school without examination therefor. In no case shall an elementary certificate of the second grade be renewed. *As amended, Stats. 1913, 157.*

3266. Life diplomas, how granted.

SEC. 28. The state board of education may grant a life diploma to any

resident of the State of Nevada who shall present evidence of having taught successfully and continuously for a period of sixty months, twenty-four of which shall have been in the State of Nevada; *provided*, that in the discretion of the state board of education the exact continuity of teaching experience may be waived. Such life diploma may be granted to any resident of Nevada who shall have taught the required number of months and who shall hold a renewable Nevada certificate, or who shall hold a special certificate that has been the applicant's only license to teach for a period of at least sixty months previous to the application for such life diploma; *provided*, that when a teacher is a graduate of a standard normal college and has taught successfully and continuously in public schools outside the State of Nevada for a period of not less than fifty months such teacher may, in the discretion of the state board of education, be granted a life diploma after having successfully taught in private schools in the State of Nevada for a period of not less than thirty months, and who shall have possessed, while teaching in such private schools, a legal Nevada certificate of renewable grade. A life diploma granted under this section shall be of the same grade and of the same name as the certificate held by the applicant at the time of the application for the life diploma, and shall entitle the holder thereof to teach in any school in the State of Nevada of the grade of the certificate upon which the life diploma was granted, or to teach those subjects in any school which the special certificate entitled the holder to teach at the time of the application for the life diploma. *As amended, Stats. 1915, 134; 1917, 175.*

An Act to provide for the payment of retirement salaries to public-school teachers of this state, and all matters properly connected therewith.

Approved March 23, 1915, 303

Retirement salary fund.

SECTION 1. There are hereby established two funds in the state treasury, to be known, respectively, as the public-school teachers' retirement salary fund and the public-school teachers' permanent fund. The public-school teachers' permanent fund shall be made up of all moneys received from the following sources, or derived in the following manner:

(1) The income and interest derived from the investment of moneys contained in such fund;

(2) An ad valorem tax of five mills on the hundred dollars of all taxable property in the state; and the board of county commissioners of the several counties shall, annually, at the same time other state taxes are levied, add this to the other taxes provided by law to be levied and collected, and it shall be annually collected at the same time and in the same manner as other state taxes are collected, and if, from any reason whatever, in any year said taxes are not levied as herein required, by the board of county commissioners, the county auditor shall enter them on the assessment roll as required by law for other taxes;

(3) All donations, legacies, gifts, and bequests which shall be made to such fund, and all the moneys which shall be obtained or contributed for the same purposes from other sources. *As amended, Stats. 1919, 468.*

Moneys transferred.

SEC. 2. The public-school teachers' retirement salary fund shall be made up of such moneys as shall be transferred from time to time under authority of this act from the public-school teachers' permanent fund.

Duties of controller and treasurer.

SEC. 3. It shall be the duty of the state controller and of the state treasurer to make, when notified by the public-school teachers' retirement salary

fund board, or by the state superintendent of public instruction, under authority of this act, transfers of such amounts from the public-school teachers' permanent fund to the public-school teachers' retirement salary fund as will be sufficient to meet the claims which may be legally drawn against said public-school teachers' retirement salary fund.

Secs. 4 and 5, Stats. 1915, 304, repealed, Stats. 1919, 469.

Board, how constituted.

SEC. 6. The state board of education shall constitute the public-school teachers' retirement salary fund board. The president and secretary of the state board of education shall be the president and secretary, respectively, of said public-school teachers' retirement salary fund board.

Powers of board.

SEC. 7. The public-school teachers' retirement salary fund board, subject to the provisions of this act, shall have power, and it shall be its duty:

(1) To approve and allow retirement salaries of public-school teachers entitled to the same under the provisions of this act;

(2) Through its president or other officer designated by it for that purpose, to audit all claims and demands for money expended or authorized to be expended by it, and certify all claims and demands against the public-school teachers' permanent fund and the public-school teachers' retirement salary fund, including all retirement salary demands, to the state controller, who shall draw his warrant therefor upon the state treasurer, payable out of said fund; *provided*, that no demands shall be allowed except after resolution, duly passed at a meeting of the board by a majority of its members, which adoptions shall be attested by the secretary;

(3) To invest the moneys in the permanent fund in securities and to collect the income therefrom and interest and dividends thereon; to deposit such securities with the state treasurer, and to make sale of such securities when, in its judgment, such sale will be advisable; *provided*, that none of the moneys in the public-school teachers' permanent fund shall be invested in any securities except such securities as those in which the funds of savings banks may be legally invested. The state controller is authorized to draw his warrant upon the public-school teacher's permanent fund in payment of duly audited claims arising out of the investment of the moneys in said fund;

(4) To prescribe the duties of the secretary and other officers of the board;

(5) To conduct investigation in all matters relating to the operation of this act, and to subpoena witnesses and compel their attendance to testify before it in respect to such matters.

Sec. 4. This act shall take effect as of date, February 1, 1919, and any teacher who has made any payment for the year 1918-1919, other than the first payment of \$4.50, shall have the same refunded to her by the state teachers' retirement salary fund board. *As amended, Stats. 1919, 469.*

Meetings of board.

SEC. 8. Said public-school teachers' retirement salary fund board shall meet at least once every three months, and at each quarterly meeting shall make a list of all persons entitled to payment out of the fund established by this act, and enter said list in a book to be kept by the board for that purpose, to be known as the "Public School Teachers' Retirement Salary Fund Record." Said list shall be certified as correct by the president and secretary of the board, and shall always be open to public inspection. In the performance of the duties of the board, each member and secretary thereof may administer oaths and affirmations to witnesses and others transacting business with the board.

Rules and regulations.

SEC. 9. The board shall make rules and regulations not inconsistent with the provisions of this act, which shall have the force and effect of law. Such rules and regulations shall:

(1) Provide for the conduct and regulation of the meetings of the board and the operation of the business thereof;

(2) Provide for the enforcement and carrying into effect of the provisions of this act;

(3) Establish a system of accounts showing the condition of the public-school teachers' permanent fund and the public-school teachers' retirement salary fund, and receipts and disbursements for and on account of said funds;

(4) Prescribe the form of warrants, vouchers, receipts, reports, and accounts to be used in respect to said funds;

(5) Regulate the duties of boards of education, school trustees, and other school authorities, imposed upon them by this act, in respect to the contributions by teachers to the public-school teachers' permanent fund, and the deduction of such contributions from the teachers' salaries.

Rules to be enforced.

SEC. 10. In addition to the powers hereinabove enumerated said board shall make and enforce all necessary and proper rules and regulations for the method or methods of applying for and obtaining retirement salaries provided for in this act, and for the method or methods of determining the right of each applicant to such retirement salary; *provided, however*, that in all cases legal proof of all necessary facts shall be required and kept on file.

Duties of deputy superintendents.

SEC. 11. The deputy superintendent of schools of each supervision district shall report to the superintendent of public instruction, before the fifteenth day of July of each year, the amount that will be required during the current fiscal year to pay the retirement salaries to be paid in such supervision district, and said superintendent of public instruction shall determine from said reports the entire amount required to pay said retirement salaries during said current fiscal year. He shall report the amount required to make such payments to the public-school teachers' retirement salary fund board, and thereupon said board shall notify the state controller and by resolution, duly adopted, shall direct him to make transfer of the needed amount from the public-school teachers' permanent fund to the public-school teachers' retirement salary fund. It shall be the duty of the state controller thereupon to make such transfer and to notify the state treasurer in order that he may make corresponding entry in the records of his office. When claims for payment of retirement salaries have been duly audited under the provisions of this act the controller shall draw his warrant therefor upon the said public-school teachers' retirement salary fund.

Amount of pension.

SEC. 12. Every public-school teacher who shall have complied with all the requirements of this act, and who shall have served as a legally qualified teacher in the public schools, or partly as such teacher and partly as superintendent or supervising executive or educational administrator, for at least thirty school years, at least fifteen of which shall have been in the public schools of this state, including the last ten years of service immediately preceding retirement, under a legal certificate shall be entitled to retire; or if physically or mentally incapacitated for the proper

performance of the duties of teacher, may be compelled to retire by the board of education, school trustees, or other school authorities employing such teacher. Upon retirement, voluntary or involuntary, such teacher shall be entitled to receive, during life, an annual retirement salary of six hundred dollars, payable in installments quarterly by warrant drawn as provided in section seven of this act; *provided*, that application for such salary be made within two years after the last month of service or within two years after the approval of this act. *As amended, Stats. 1919, 153.*

Retirement, how accomplished.

SEC. 13. Any public-school teacher who shall have complied with all the requirements of this act and who shall have served as a legally qualified teacher for at least fifteen years in the public schools of this state, and who shall have by reason of bodily or mental infirmity become physically or mentally incapacitated for further school service, under a legal certificate, shall be entitled to retire, or may, by the board of education, school trustees, or other school authorities employing such teacher, be compelled to retire. Upon retirement, voluntary or involuntary, such teacher shall be entitled to receive during the period of such disability, an annual retirement salary, payable in installments quarterly, which shall be the same fraction of the maximum retirement salary of six hundred dollars as said teacher's time of service is of thirty years; *provided*, that application for such retirement salary shall be made within two years of the last month of service or within two years after the approval of this act. *As amended, Stats. 1919, 153.*

Experience, how determined.

SEC. 14. In counting actual experience for the purposes of this act, the state board of education shall determine what constitutes a school year; *provided*, that in no case shall leaves of absence amounting to school years or half-school years be counted as service.

Act binding, when.

SEC. 15. This act shall be binding upon all such teachers employed in the public schools of this state at the time of the approval of this act, as shall, on or before October 1, 1915, sign and deliver to the superintendent of public instruction and the deputy superintendent of schools of the supervision district in which said teachers are in service, a notification that said teachers agree to be bound by and to avail themselves of the benefits of this act.

Binding upon new teachers.

SEC. 16. This act shall be binding upon all teachers elected or appointed to teach in the public schools of this state after the approval of this act, who, not being in the service of the public schools at the time of the approval of said act, were not competent to sign or deliver the notification specified in section fifteen.

Retirement salary shall cease, when.

SEC. 17. If any teacher retired under the provisions of this act shall be reemployed in the public schools of this state, such teacher's retirement salary shall cease; and if any teacher having qualified under section thirteen hereof returns to service in the public schools of the state and thereafter qualifies under section twelve hereof, there shall be deducted from the retirement salary payable to such teacher under the provisions of section twelve hereof the amount of retirement salary theretofore actually received by such teacher under the provisions of section thirteen hereof, such amount to be so deducted in equal quarterly installments until

the whole amount so received under said section thirteen shall have been deducted; *provided, however*, that the amount of such deduction to be made quarterly shall not exceed thirty-five dollars.

Only one salary may be drawn.

SEC. 18. No one shall be permitted to draw from the state, directly or indirectly, more than one retirement salary. Nothing in this act shall be so construed, however, as to prevent local communities or bodies of teachers from supplementing the retirement salary received from the state.

3303. Meetings of trustees—Salary of clerk.

SEC. 65. It shall be the duty of the board of trustees, a majority of whom shall constitute a quorum for the transaction of business, to meet on the first Monday in May following their election, or as soon as practicable thereafter, after taking the oath of office, at such place as may be most convenient in the district, and to organize by electing one of their number president of the board and another as clerk. It shall be the duty of the president to preside at the meetings of the board. It shall be the duty of the clerk to record the proceedings of the board in a book to be provided for the purpose, and all such proceedings when so recorded shall be signed by such clerk. Said book shall at all times be subject to the inspection of the deputy superintendent of public instruction and of any taxpayer in the district. In districts having a school-census population of three hundred or more and not exceeding one thousand, the clerk of the board of trustees may receive such salary as said board may allow; *provided*, that such salary shall not exceed twenty-five dollars per month; *provided*, that in districts having a school-census population of one thousand or more, the clerk of the board of trustees shall receive a salary not to exceed fifty dollars per month. *As amended, Stats. 1917, 183.*

3309. Under this section, it was held that, where plaintiff, a school trustee, had no pecuniary interest or understanding with defendant at the time defendant's bid for the construction of a schoolhouse was accepted by the board, the fact that plaintiff was a trustee did not deprive him of the right to lawfully contract thereafter to furnish defendant materials to be used in the performance of his contract, nor afford defendant a defense to an action for the price. *Worrell v. Jurden*, 36 Nev. 85, 89 (132 P. 1158).

Where defendant, after obtaining a contract to build a schoolhouse, obtained labor and materials from plaintiff, who was one of the trustees, defendant could not successfully claim that the contract was valid as between himself and the school district, and invalid as between himself and the trustee. *Id.*

An Act requiring school trustees to advertise for bids on contracts for the erection of new school buildings, or for the repairing or adding to an old school building, whenever the cost of such work is to exceed five hundred dollars.

Approved March 25, 1915, 375

Trustees must advertise, when, how.

SECTION 1. Whenever the trustees of any school district shall decide to erect any new school building that is to cost more than five hundred dollars or to repair or add to any old school building, which repair or addition is to cost more than five hundred dollars, or to purchase school furniture that is to cost more than five hundred dollars, they shall advertise for bids for the contract to erect the said new building, or to make the repairs or addition. Such advertising shall be done in the following manner: If a daily newspaper is published in the district, the advertisement for bids shall be published in such newspaper for ten successive days previous to the opening of such bids. If there is only a weekly newspaper published in the district, the advertisement for bids shall be published in at least two weekly issues

previous to the opening of such bids. If no newspaper is published in the district, the trustees shall cause such advertisement to be published in some paper in the county for the same periods of time as those mentioned above in this section.

Contract awarded lowest and best bidder.

SEC. 2. In all cases where more than five hundred dollars is to be expended upon the erection of any school building, or upon the repair or addition to any school building or upon the purchase of school furniture, the trustees shall award the contract for such work to the lowest and best bidder for the contract.

3316. New districts, when.

SEC. 77. The boards of county commissioners of the several counties of the state are hereby authorized and empowered to create new school districts from unorganized territory when there shall have been presented to them from the parents or guardians of five school-census children a certified petition which shall accurately describe the boundaries of the proposed district, such boundaries to conform, when practicable, with the lines of the government surveys, and the names and ages of all children residing in such proposed district at the date of such petition. The boards of county commissioners may create new districts from a portion or portions of one or more established districts upon the presentation of a similar petition signed by not less than three-fifths of the heads of families and taxpayers of the districts from which the proposed new district is to be taken. They may make changes in the boundaries of districts upon petition of three-fifths of the heads of families and taxpayers of the district or districts to be affected by the change, or they may make changes in said boundaries so as to place one or more families having school children, residing in a school district much nearer the schoolhouse of an adjoining district than that of their own, in the district most convenient for them to attend; *provided*, that this may be done only on written petition of the family or families desiring such change and that said petition shall be accompanied by the recommendation of the deputy or district superintendent; *and provided further*, that before decisive action in the premises by the board of county commissioners, due notice shall be given to the two school districts to be affected by the proposed change, that parents and others who may be opposed thereto can appear before the board of county commissioners at the next regular meeting thereof, or at a later designated date, to show cause why the aforesaid petition should not be granted.

When a new school district is organized, school shall be commenced therein within one hundred twenty days from the date of action of the board of county commissioners creating such district, and if school shall not be commenced within such time within said district then such action shall become void and no such district shall exist.

No district organized under this act shall exceed in size sixteen miles square. *As amended, Stats. 1917, 389.*

3323. What boards govern—More than one school, when.

SEC. 84. The school thus established shall be under the immediate control of the board of school trustees in whose district the school is held and shall be maintained according to the terms of agreement made between the two boards concerned in the union school; *provided*, that school may be maintained at more than one point in the union district thus formed, if found necessary or advisable; *and provided further*, that the classes and grades in the two districts shall be arranged with reference to the convenience of the children and the efficient and economical management of the school. In case of a disagreement of the two boards as to the

arrangement and distribution of the various classes and grades in the two districts, the deputy superintendent of schools shall determine the same. *As amended, Stats. 1919, 147.*

3324. Pro rata vouchers.

SEC. 85. Vouchers shall be made out on the separate district funds for the pro rata of monthly expenses, as agreed upon by the two boards in forming the union school, and these vouchers shall be signed by the president and the clerk of the school board in the district on whose funds the vouchers are drawn. *As amended, Stats. 1919, 147.*

3325. Districts, how dissolved.

SEC. 86. The union school or district, herein provided for, may be dissolved in June of any year by mutual consent or action of the boards of school trustees in the districts interested, or by the unanimous action of the school board of either district; *provided*, that no indebtedness incurred in maintaining the union school exists; *and provided further*, that in case of dissolution by action of only one of the two districts as herein prescribed, at least thirty days notice of intention to dissolve shall have been given to the other board. *As amended, Stats. 1919, 147.*

3336. District abolished, when.

SEC. 97. Upon notice from the deputy superintendent of public instruction that a district has fewer than three resident children in actual school attendance, the board of county commissioners shall abolish such district; *provided, however*, that where there are at least two resident children in actual attendance, and there is sufficient funds to the credit of the district or in its treasury to meet the actual expense attendant on the continuation of the school, the district shall be continued and the school maintained so long as such funds so exist. *As amended, Stats. 1917, 391.*

An Act to provide for the consolidation of two one-teacher rural school districts adjoining each other, but situated one in each of two adjoining counties.

Approved March 14, 1917, 173

May consolidate.

SECTION 1. The boards of county commissioners of any two adjoining counties in which there are two one-teacher rural school districts adjoining each other, but situated one in each of said adjoining counties, in which the total number of school-census children does not exceed forty, may by separate action unite the two and form a consolidated school district, on the recommendation of the state superintendent of public instruction, and without formal petition of the residents of said districts; *provided*, that the state superintendent before making such recommendation shall have been thereto requested by the parents representing a majority of the school-census children in the two districts, and shall have satisfied himself that the educational needs of the two districts would thereby be more efficiently promoted.

Name of district.

SEC. 2. The name of the district thus formed shall be consolidated school district No. (blanks to be filled by the initial letters of the two counties, as "H. W.").

Joint board of trustees.

SEC. 3. Upon receiving notice from the county boards of commissioners that favorable action has been taken on the recommendation made, the state superintendent shall appoint a board of three trustees who shall serve

until the first Monday in May following the next regular school election. The persons thus appointed shall take the oath of office as soon as possible thereafter and organize as a board by electing one of their number as president and another as clerk.

Under general consolidation act.

SEC. 4. The consolidated school district thus established and organized shall come under the benefits and privileges of the general school consolidation act, approved February 26, 1915; and its board of school trustees shall have all the powers and duties pertaining to school boards in all other school districts.

An Act to provide for the consolidation of school districts, for the transportation of children to and from school, and other matters relating thereto.

Approved February 26, 1915, 27

What districts may consolidate.

SECTION 1. Any two or more adjacent school districts may unite for the purpose of establishing a single consolidated district.

Method of consolidation—Notice—Procedure.

SEC. 2. The process of uniting two or more school districts into a consolidated district shall be as follows: Upon receipt of a petition signed by a majority of the voters who are entitled to a vote at school elections, from each of the districts to be affected by the consolidation, the county commissioners of the county in which such districts are located shall cause a notice to be published for three consecutive weeks in a newspaper having general circulation throughout the county, which notice shall state fully the names of the districts proposing to consolidate, the boundaries of the proposed consolidated district, and shall set forth a day and hour at the next regular meeting of the board of county commissioners when the said board will canvass the signatures on each petition and hear statements that any of the residents of any of the districts to be affected by the consolidation may wish to make either for or against the proposition of consolidation. At the time set forth in the notice the county commissioners shall proceed to canvass the signatures on each petition, and if a majority of said board are satisfied that the petitions presented represent the will of a majority of the voters of each of the districts affected, they shall unite such districts into a single consolidated district, shall designate the said district as Consolidated School District No., and shall designate a place at which the school trustees of the several districts united shall meet to hold an election. If three or more school districts are proposing to consolidate and a majority of the voters of any district are opposed to such consolidation, such district shall not be made a part of the consolidated district, but the county commissioners may consolidate such other districts as are affected by the consolidation without requiring new petitions.

Trustees, how elected.

SEC. 3. On the second Saturday after the consolidated district has been formed the trustees of the several districts which have consolidated shall meet at the place designated by the county commissioners as hereinbefore provided and shall elect by ballot three of their number to be trustees of the consolidated district and such trustees shall hold office until the next regular election of school trustees as now provided by law. A certified statement of the result of said election, together with the oaths of office of the trustees elected, shall be filed with the superintendent of the supervision

district in which the consolidated district is located. In case such election is not held, the superintendent shall appoint the trustees. Upon the election or appointment of the trustees of the consolidated district, the districts which have consolidated shall each be considered disorganized and the offices of trustees of each of the several districts as no longer existing.

Contracts with drivers—Bond.

SEC. 4. *And provided further*, that the trustees of consolidated school districts shall require contracts with persons who shall be of reputable character elected as drivers of vehicles used to transport children to school at the expense of the district. Such contracts shall state the time of the arrival at and the departure from the schoolhouse each day, the time such person is to act as driver of such vehicle unless released by agreement, the compensation of the driver and any other details that the trustees may designate. Before any driver of any school vehicle shall begin the duties of that position he shall furnish a bond of an amount equal to his total wages for the current term of school in which he shall be hired, which bond shall insure the faithful performance of his contract.

Funds for transportation.

SEC. 5. To obtain funds for such transportation, the trustees shall, each year, make an estimate of the amount of money necessary to maintain such transportation for that year or for the next ensuing year or for both, and shall certify the amount to the county commissioners, who shall ascertain the necessary percentage on the property in said district as shown by the last assessment made thereof after equalization to raise the amount of money certified to and shall add it to the next county tax to be collected on the property aforesaid; and the same shall be paid into the county treasury in favor of said district and be kept as a separate fund to be known as Consolidated School District No.....Transportation Fund, to be drawn only for purposes of transportation of school children to and from school, and in the same manner as is now provided by law for drawing other school moneys; *provided*, that if the trustees shall certify to the county commissioners that such money is necessary for immediate use, the tax provided for in this section shall be due and payable to the treasurer of the county in the same manner as are all other taxes.

Certain children provided with transportation.

SEC. 6. The trustees of any school district, other than a consolidated district, shall provide transportation to and from school for all children living one mile or more therefrom in the manner provided in sections four and five of this act, if at any regular or special election held in the district the proposition of providing transportation for pupils to and from schools shall have been submitted to the qualified voters of the district and a majority of the votes cast shall have favored such transportation.

Public moneys, how apportioned.

SEC. 7. In apportioning county and state school moneys to a consolidated school district the superintendent of public instruction shall apportion such moneys in the following manner:

First—He shall ascertain from former records of the state or the county in which such consolidated district is located the number of districts that united to form the consolidated district, and the exact number of census children in all of those districts at the time of the annual school census last preceding the date of the consolidation. The number of census children thus found shall constitute the basis upon which such consolidated district shall receive its share of sixty per cent of the county school fund, and

thirty per cent of the state school fund at all apportionments of state and county school moneys until the next regular school census is taken. Thereafter at each apportionment such consolidated district shall receive its share of sixty per cent of the county school fund, and thirty per cent of the state school fund upon the basis of the actual number of census children in such district as shown by the last preceding school census.

Second—In determining the number of teachers that the consolidated district is entitled to receive state and county school moneys upon according to the law governing the apportionment of state and county school moneys to the several school districts of the state, the superintendent of public instruction shall determine the number of teachers that constituted the basis for apportioning state and county school moneys to each of the districts that united to form the consolidated district at the time of the apportionment of state and county school moneys last preceding the date of the consolidation. He shall determine the number of teachers that shall constitute the basis for apportioning state and county school moneys to any consolidated district by adding together the teachers thus found in the several districts that united to form the consolidation district; *provided*, that if at any future time the number of children in the consolidated district shall become such as to allow a larger number of teachers for apportionment purposes, according to the law governing such matters in other school districts of the state, the superintendent of public instruction shall apportion state and county school moneys to such consolidated district upon the actual number of teachers as determined by the general law of apportionment of state and county school moneys.

Funds to accrue.

SEC. 8. All state and county school funds remaining to the credit of school districts that have become disorganized by uniting to form a consolidated district shall accrue to and be placed to the credit of the consolidated district of which the disorganized districts form a part.

Old debts, how paid.

SEC. 9. If any school district uniting to form a consolidated district shall have, at the time of its disorganization, a legally bonded indebtedness, such indebtedness shall attach to and become a charge against the territory comprised in the consolidated district, and it shall be the duty of the county commissioners of the county in which such territory is located to cause annually to be levied upon the property, real and personal, in such consolidated district, a tax sufficient to meet the interest and provide a sinking fund for the payment of such indebtedness.

Property accrues to new district.

SEC. 10. The school property of the disorganized districts shall, upon the organization of the consolidated district, be and become the property of the said consolidated district, and the board of trustees of said district is hereby authorized to use said property in carrying out the school work of the consolidated district or to sell or dispose of it in the manner now provided by law for the disposition of school property and for the best interests of the said district.

School law to govern.

SEC. 11. In all matters relating to consolidated school districts, not provided for in the preceding sections of this act, the law relating to other school districts shall be in force where said laws are applicable.

Old districts entitled to privileges of act.

SEC. 11A. All school districts in the State of Nevada that shall have

been transporting school children to the schoolhouse at the expense of the school district at the time of the passage of this act shall be entitled to all the privileges given in this act to consolidate school districts, and after the passage of this act such districts as were transporting children to a school at the expense of the district at the time of the passage of this act shall thereafter be designated as consolidated districts, and shall come under all the rules, laws and regulations of this act.

An Act to provide for the union of certain school districts for the purpose of securing instruction in manual training and domestic science, and matters properly related thereto.

Approved March 16, 1915, 175

Industrial school union, how formed.

SECTION 1. Any group of not to exceed six school districts in the state may form an industrial school union for the purpose of giving instruction in manual training or domestic science, or both manual training and domestic science. Such industrial school union shall be organized in the following manner: Whenever each of the boards of trustees of any number of school districts not exceeding six shall certify to the county commissioners of any county that by a resolution passed at a regularly called meeting of such board it was ordered that the school district become a part of.....industrial school union, it shall be the duty of the county commissioners to designate such districts as constituting theindustrial school union. If the trustees of more than six such school districts shall certify to the commissioners that they desire to join such industrial school union, the county commissioners shall decide which six districts of those applying shall constitute the industrial school union.

Powers and duties of directors.

SEC. 2. Whenever any industrial school union shall be thus organized by the county commissioners, the board of trustees of each of the districts constituting such industrial school union shall elect one of its members to become a member of the board of directors of the industrial school union, and the board of directors thus constituted shall have power, and it shall be their duty:

1. To meet at some place agreed upon by a majority of the board of directors on the second Saturday following the organization of the industrial school union by the county commissioners, at which meeting they shall elect a president and secretary of the board, and adopt such rules of procedure as they shall deem necessary.

2. To designate a time at which they will elect a teacher of manual training and domestic science for the industrial school union, and determine the salary to be paid.

3. To determine the amount of money each district constituting the industrial school union shall raise and contribute toward the salary of the manual-training and domestic-science teacher. The amounts to be raised by such districts shall be proportional to the property valuations of the several districts constituting the industrial school union.

4. To certify to the county commissioners the amount of money to be raised by each of the districts constituting the industrial school union, and it shall be the duty of the county commissioners to levy and cause to be collected in each of the districts constituting the industrial school union a special tax sufficient to raise the amount of money determined by the

board of directors as the necessary amount to be raised by such district. Such taxes shall be levied, equalized, and collected in the same manner as other school district taxes are levied, equalized, and collected, and the money thus paid to the county treasurer shall constitute the teachers' salary fund of.....industrial school union, and shall be used for no other purpose than for paying the salary of the manual-training and domestic-science teacher of that industrial school union.

5. To make rules and regulations governing the schedule of time the manual-training and domestic-science teacher shall give to each district constituting the industrial school union.

Trustees to decide.

SEC. 3. It shall be the duty of the board of trustees of each of the districts constituting the industrial school union to decide whether manual training or domestic science, or both such subjects, shall be taught in such district, and to provide a suitable room in which the same shall be taught, and to equip such room with sufficient tools, apparatus, and material for the proper instruction in the subject selected.

Tools must be provided.

SEC. 4. If any district constituting the industrial school union shall fail to provide the necessary tools, apparatus, or material for the proper instruction in the subjects selected as provided in section 3 of this act, the board of directors shall authorize the manual-training and domestic-science teacher to purchase such necessary tools, apparatus, or material, and upon presentation of the bill for such supplies the board of directors shall order the county auditor to pay the same from the county school fund of the delinquent district, and the county auditor and the county treasurer shall pay such order in the same manner as other school orders are paid; *provided*, that no such purchases by the manual-training and domestic-science teacher shall exceed in value one hundred fifty dollars.

Meetings of directors—Quorum—Proxies, when.

SEC. 5. Meetings of the board of directors of the industrial school union shall be held at the call of the president, or at the request of any two members of the board. Such meetings shall be governed by the same rules governing other school boards of the state; *provided*, that a quorum for the transaction of business shall consist of not less than half of all the members of the board, except that the president and secretary may make legal orders for the salary of the teacher; *and provided further*, that members of the board of directors may vote by written proxy upon all questions except those involving teachers' contracts or change of schedule of the teacher.

School law to govern.

SEC. 6. The industrial school union shall be under the same laws, rules, and regulations as the public schools of the state in so far as such laws, rules, and regulations are not in conflict with the provisions of this act.

Organization undissolved for two years.

SEC. 7. The organization of the industrial school union shall remain undissolved for a period of two years from the thirtieth of June following the organization of the industrial school union by the county commissioners. At the end of the aforesaid two-year period the county commissioners shall renew the organization of the union upon receipt of the same kind of certified statements as provided in section 1 of this act.

An Act to provide for the transfer of children from one school district to an adjoining school district in the same county, and other matters properly related thereto.

Approved March 24, 1913, 305

When pupils may be transferred.

SECTION 1. Any board of school trustees is authorized and empowered to make arrangements with the board of school trustees of an adjoining district in the same county for the attendance of children in either district that may be most convenient for such children, whenever the parent or parents, guardian or guardians of said children shall present a written request therefor to the school board of the district in which such children reside, accompanied by a written permit from the school board of the district in which said children desire to attend. And whenever the two boards of trustees in interest shall agree upon the transfer of said children, and notice thereof shall be given to the superintendent of public instruction by either of said school boards, said superintendent shall direct the county auditor and the county treasurer of the county in which such districts are situated to transfer from the funds of the district in which such children live to the credit of the funds of the district in which they are attending, the pro rata of state and county moneys apportioned to each child in the county for each of such children as shown by the last preceding semiannual apportionment; *provided*, that such moneys shall be transferred but twice each year, first at about the middle of any year of attendance, and again at the close; and such transfer shall cover only those in attendance during the period for which the transfer of moneys is made.

Superintendent of public instruction to settle disputes.

SEC. 2. In case of disagreement as to the transfer of children as provided for in section 1 of this act, the superintendent of public instruction shall, on request of the parties named in section 1 of this act, make due inquiry in the premises; and if said officer is satisfied that the school board of the adjoining district is willing to receive such children and that such children ought to have the privilege of attending in said district, he may decide that they may so attend, and he shall direct the county auditor and the county treasurer to make the transfer of school moneys in the manner provided in section 1 of this act.

An Act authorizing the county commissioners of the various counties to reestablish the boundaries of school districts, and road districts in their respective counties.

Approved March 24, 1913, 306

Commissioners to reestablish boundaries.

SECTION 1. The county commissioners of any county in the state are hereby authorized to reestablish the boundaries of any school district or road district within the county whenever they shall deem the boundary of such school district or road district indistinct or indefinite as such boundary appears upon the records of the county commissioners.

To conform to U. S. surveys.

SEC. 2. Whenever the county commissioners shall reestablish the boundaries of school districts or road districts in accordance with this act, they shall make the new boundaries that they shall set forth for such school districts or road districts conform to the legal land surveys of the United States government so far as is possible.

New boundaries to include same property.

SEC. 3. Whenever the county commissioners shall reestablish the boundaries of school districts or road districts in accordance with this act they shall arrange the new boundaries so that all properties and residences that were in the school districts or road districts previous to the reestablishment of boundaries for such school districts or road districts under this act shall be within the new boundaries that the commissioners may establish under this act; *provided*, that whenever the heads of families and taxpayers of any school district shall present a petition signed by at least three-fifths of such heads of families and taxpayers to the county commissioners praying that the boundaries of such school district shall be determined in accordance with their petition, the county commissioners shall, when reestablishing such boundaries, make the new boundaries conform as nearly as possible to the boundary described in the aforesaid petition.

Commissioners to use discretion.

SEC. 4. Whenever the county commissioners shall decide that the boundaries of any school district or road district are so indefinite upon the records of the county as to make it impossible to decide in which school district or road district certain properties or residences may be located, they shall proceed to establish the new boundaries for such school district or road district as they shall deem best and for the welfare of the county.

No property to escape taxation.

SEC. 5. Nothing in this act shall be construed so as to release any property from taxation for any bond issue that the property shall have been subject to previous to any new establishment of boundaries of any school district in accordance with this act.

3343. Defining school month.

SEC. 104. A school month shall consist of four weeks of five days each, and teachers shall be paid only for the time in which they are actually engaged in teaching; *provided*, that when an intermission of less than six days is ordered by the trustees no deduction of salary shall be made therefor; *and provided further*, that when on account of sickness or epidemic a longer intermission is ordered by the board of school trustees or by a duly constituted board of health, and such intermission or closing does not exceed thirty days at any one time, there shall be no deduction or discontinuance of salary or salaries therefor. The term "teacher," as used in this act, shall be understood to mean teachers, principals and superintendents of the elementary and secondary schools of this state. *As amended, Stats. 1917, 398.*

3348. Repealed, Stats. 1915, 18.**3352. Deputy superintendent must enforce U. S. flag act.**

SEC. 3. It is hereby made the duty of the deputy superintendent of public instruction of each school district in the State of Nevada to see that the provisions of this act are carried into effect, and each of said deputy superintendents of public instruction is hereby authorized and empowered to make such rules as may be necessary to enforce the provisions of this act. *Added, Stats. 1915, 180.*

3353. This section changed by "An act creating an official flag for the State of Nevada," etc., Stats. 1915, 251, post.

An Act empowering the superintendent of public instruction, regents of the state university, and school trustees to dismiss certain employees and forbidding them to engage or employ in the educational department in a professional manner any person other than a citizen of the United States, and prohibiting the state controller and county auditors from issuing any warrants to any person other than a citizen of the United States, and providing a penalty therefor.

Approved March 26, 1915, 427

All teachers and school officers must be U. S. citizens.

SECTION 1. From and after the passage of this act, the superintendent of public instruction, regents of the state university, and school trustees are hereby empowered and required to dismiss any teacher, instructor, instructress, professor, or president employed in the educational department of this state who is not a citizen of the United States; or who has not declared his or her intentions to become a citizen.

Educational officers not to employ noncitizens.

SEC. 2. It shall be unlawful for the superintendent of public instruction, regents of the state university, or school trustees to engage or hire any president, superintendent, teacher, instructor, instructress, or professor in any of the educational departments of this state who is not a citizen of the United States.

Disbursing officers not to pay salaries.

SEC. 3. It shall be unlawful for the state controller or county auditors to issue any warrants to any teacher, instructor, instructress, professor, superintendent, or president in any of the educational departments of this state who is not a citizen of the United States, or who has not complied with the provisions of section one of this act.

Penalty.

SEC. 4. Any person who violates section three of this act, and upon conviction in any court of competent jurisdiction, his or her bondsmen shall be held in the penal sum of one thousand dollars for the first offense, and for each and every subsequent offense they shall be held in the penal sum of twenty-five hundred dollars, to be paid into the treasury of the State of Nevada, or county treasury, as the case may be.

An Act to prohibit the teaching of any subject or subjects other than foreign languages in the public or private schools in the State of Nevada except in the English language, and to provide a penalty for the violation thereof.

Approved March 27, 1919, 247

All subjects, except foreign languages, to be taught in English.

SECTION 1. It shall be unlawful for any board of school trustees, regents, or board of education, or for any teacher or other person teaching in the public or private schools in the State of Nevada, to cause to be taught or to teach any subject or subjects, other than foreign languages, in the public or private schools in the State of Nevada in any language except English.

Penalty for violation.

SEC. 2. Any school board, regents, trustees, teacher or other person violating the provisions of section 1 of this act shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for the first offense, and not less than two hundred and

fifty dollars (\$250) nor more than one thousand dollars (\$1,000) for any subsequent offense or offenses, or in lieu of said fine the court may confine said person or persons violating section 1 of this act in the county jail for not less than thirty (30) days, or more than one year.

An Act to provide for a Frances Willard memorial day.

Approved March 10, 1919, 61

Frances Willard day established.

SECTION 1. September 28 of each year shall be and is hereby set apart and designated as Frances Willard day, and in every public school in the State of Nevada one-half of the school day on said date shall be set apart for instruction and appropriate exercises relative to the history and benefits of prohibition of the manufacture of narcotics and sale of intoxicating liquors in the United States; *and provided*, that in any year September 28 shall fall upon a day of the week which is not a school day, then the school day nearest that date shall be taken in lieu of September 28. It shall be the duty of all state, county, and school-district officers and all public-school teachers of the state to carry out the provisions of this act.

3361. Appointment of census marshals.

SEC. 122. For the purpose of securing the school census each year in the State of Nevada, the school districts of the state are hereby classified as follows: All school districts having thirty or more school-census children at the last preceding school census shall be known as districts of the first class. All school districts having fewer than thirty census school children at the last preceding school census shall be known as districts of the second class.

In all school districts of the second class as described in this section the regularly appointed and qualified teachers shall be *ex officio* school-census marshals and shall serve without compensation for such services as census marshals; *provided*, that if there shall not be any regular teachers employed and engaged in teaching in any school district of the second class as described in this section on the first day of March of each year, then it shall be the duty of the trustees of such districts to appoint on the said first day of March of each year a competent person over twenty-one years of age as census marshal for the district in the same manner as provided herein for appointment of census marshals in school districts of the first class, and in case a census marshal is appointed in such school district of the second class because there is no teacher therein, then the said marshal shall be paid for the services in the same manner as marshals in the districts of the first class are paid.

It shall be the duty of the board of trustees of each school district of the first class as described in this section to appoint a competent person over twenty-one years of age as school-census marshal before the first day of March of each year, and to notify the deputy superintendent of public instruction of such appointment immediately after it is made. This section shall not be construed in such a way as to prevent the appointment of a member of the board of school trustees or of a woman as school-census marshal.

If the board of school trustees shall fail to appoint a school-census marshal in any district of the first class as described in this section, or in any district of the second class when necessary, as provided in this section, before the fifteenth day of March of each year, the deputy superintendent of public instruction shall appoint the census marshal for such school districts, such appointee to proceed in like manner as if appointed by the school trustees, and any appointment of census marshal made by

the trustees subsequent to that time shall be void. *As amended, Stats. 1913, 153.*

3363. Assignment and duties of marshal.

SEC. 124. The board of trustees shall designate to each census marshal the portion of the school district in which the said marshal shall take the census, and each census marshal shall be responsible for a correct census in the territory to which he is appointed, and he shall return his census reports to the clerk of the board of trustees. The board of trustees shall, in case of two marshals in the same district, designate which marshal shall compile the final report for the deputy superintendent of public instruction and the board of trustees.

Before the school-census marshal shall enter upon the performance of his duties, he shall take and subscribe to the oath of office, and such oath shall be filed in the office of the deputy superintendent of public instruction.

It shall be the duty of the school-census marshals to take annually in the month of April a census of the resident children of the districts for which they shall be appointed, and to report the same to the deputy superintendent of public instruction. The term "resident children," as used in this section, shall be defined in such a way as to include:

1. Children residing with their parents or guardians in such district.
2. Children temporarily residing outside of said district for the purpose of attending institutions of learning or benevolent institutions, except those children who shall be residents of a state orphans' home, in which case the said residents of a state orphans' home shall be taken in the district in which the state orphans' home shall be located; *provided*, that the parents of resident children of any district must have resided in the district on the first day of April; *and provided further*, that the resident children must themselves have been actual residents of the district immediately previous to such outside residence.

3. All Indian children of school age not enrolled on any government reservation.

The term "resident children" is further defined in such a way as to exclude:

1. Children temporarily visiting in or passing through said district.
2. Children who have never actually resided within the district, even though their parents or guardians shall reside within the district.
3. Children who are residing within the district for the purpose of attending institutions of learning or benevolent institutions, except the children of a state orphans' home, whose census shall be taken in the district in which the state orphans' home shall be located.
4. All children who may properly be included in the census of some other district.
5. Indian children (entered on the roll of any government reservation) who shall not have attended public schools at least eighty days in the twelve months preceding the date of taking the census during the last preceding year. *As amended, Stats. 1913, 154; 1919, 145.*

3365. Report, what to contain.

SEC. 126. The reports of the school-census marshals shall be made upon blank forms to be furnished by the superintendent of public instruction, and shall show the following facts:

1. The full names of all children less than eighteen years of age and residing in the district on the first day of April, such names to be given by families under the name of the parents or guardian.

2. The year, month, and day on which each child was born, and the age in years, counting to the first day of April.

3. The sex and race of each child.

4. The place of birth of each child and of each parent.

5. The total number of children less than six years of age; the total number of children not less than six years of age nor over eighteen years of age. Only those children who are not less than six years of age nor more than eighteen years of age shall be considered as school-census children.

6. Such other facts as the superintendent of public instruction may require. *As amended, Stats. 1913, 155.*

3373-3392. Cited, *State ex rel. Eggers v. Esser*, 35 Nev. 434 (129 P. 557).

3374. Rev. Laws, 3617, imposing a tax of 6 cents on the \$100 for the general school fund, was impliedly repealed by this section, imposing a tax of 10 cents on the \$100 for school purposes; the statutes being irreconcilably in conflict. *State ex rel. Eggers v. Esser*, 35 Nev. 429, 434 (129 P. 557).

This section could take effect during the fiscal year 1911 without violating the constitutional requirement of equality and uniformity, though it resulted in two different levies during the same fiscal year. *Id.*

3374. Repealed, Stats. 1912, 10.

3378. County school tax—Auditor to add tax, when.

SEC. 139. The board of county commissioners of each county shall, annually, at the time of levying other county taxes, levy a county school tax, not to exceed fifty cents on each one hundred dollars valuation of taxable property, which tax shall be added to the county tax and collected in the same manner, and paid into the county treasury as a special deposit, to be drawn in the same manner as other public-school moneys; and should said county commissioners fail or neglect to levy said tax as required it shall be the duty of the county auditor to add such tax as the superintendent of public instruction may deem sufficient, not exceeding fifty cents on each one hundred dollars valuation of taxable property in the county, to the assessment roll, to be collected as specified in this section. *As amended, Stats. 1915, 402.*

3379. Cited, *State ex rel. Reno School District v. Washoe County Commissioners*, 38 Nev. 275 (149 P. 191).

3387. Repealed, Stats. 1913, 253.

3390. Apportionment of state distributive school fund.

SEC. 151. It shall be the duty of the superintendent of public instruction, immediately after the state controller shall have made his semi-annual report, to apportion the state distributive school fund, subject to apportionment at such time. He shall apportion the moneys of said fund among the several counties of the state in the following manner:

1. He must ascertain the number of teachers to which each school district is entitled by calculating one teacher for every thirty school-census children or fractional part of thirty, equal to fifteen or more; *provided*, that a school having forty or more census children with an average attendance of twenty or more as shown by the report of such district for the last preceding school year shall be allowed an extra teacher.

2. He must apportion the state distributive school fund, subject to apportionment at the time, among the several counties of the state in the following manner:

(a) He shall apportion \$150 for each teacher to which the county is entitled as provided in paragraph one of this section.

(b) He must apportion on a per capita basis from the state distributive school fund \$2.50 for every child between the ages of six and eighteen years in the county, as shown by the last preceding school census.

(c) He shall set aside from the state distributive school fund then remaining the sum of \$20,000, to be known as the state school reserve fund.

(d) He shall apportion the balance of the state distributive school fund, after the said \$20,000 has been set aside, on a per capita basis in proportion to the number of school-census children in each district to the total number of school-census children in the state as shown by the last preceding school census.

3. (a) Whenever any county has levied 40 cents on the \$100 assessed valuation of the county, of which at least 25 cents on the \$100 is for elementary-school purposes, in counties where a separate levy is made for elementary schools and a separate levy for county high-school purposes, if such levy does not bring in an amount of money equal to that required by law of such county for all county school purposes, exclusive of school bonds and interest thereon, the superintendent of public instruction must apportion to said county from the state school reserve fund a sum of money such that taken with the amount raised by the levy of 25 cents on the \$100 by the county shall be sufficient to make the sum required by law of such county for county school purposes; *provided*, that in addition to such levy of 25 cents on the \$100 the county has levied at least 15 cents on the \$100 for county high-school purposes, exclusive of school bonds and interest thereon.

(b) Whenever any county has levied 40 cents on the \$100 of the assessed valuation of the county for the combined elementary- and high-school purposes in a county having no county high school, if such levy does not bring in an amount of money equal to that required by law of such county for county school purposes, exclusive of school bonds and interest thereon, the superintendent of public instruction must apportion to such county from the state school reserve fund a sum of money such that taken with the amount raised by the levy of 40 cents on the \$100 assessed valuation by the county shall be sufficient to make the sum required by law of such county for county school purposes, exclusive of school bonds and interest thereon.

4. (a) In addition to the apportionments already provided for in this act the superintendent of public instruction shall apportion from the state school reserve fund to any county which shall have levied a county high-school tax, when this county high-school tax rate taken with the rate required of the county for elementary schools (any relief rate having been deducted) makes a rate in excess of 40 cents on the \$100 assessed valuation of such county, a special high-school relief apportionment, equal in amount to that raised by the county by such tax in excess of 40 cents on the \$100 assessed valuation in the county, as specified above, for the county high-school fund. But in no case shall he apportion from the state school reserve fund at any semiannual apportionment an amount in excess of \$12.50 per pupil as determined by the average monthly enrollment in such county high school for the preceding school year.

(b) The superintendent of public instruction shall apportion to any district in the state, which after receiving the regular state and county apportionment provided for above shall lack the necessary funds to maintain its school property, a special district relief apportionment from the state school reserve fund whenever such district shall have levied (and there shall have been collected the first half of) a special district tax of not less than 15 cents on the \$100 of assessed valuation of said district.

If the county in which such district is located has levied a total tax for county school purposes, exclusive of school bonds and interest thereon, amounting to 40 cents on the \$100 assessed valuation of such county, the state shall provide from said state school relief fund a sum of money equal to not more than \$5 per census pupil for such relief apportionment to the district; *provided*, that no district shall receive less than \$50 relief apportionment under the provisions of this act. In case the county levy for school purposes in the county in which said district is located is less than 40 cents on the \$100 assessed valuation for county school purposes, exclusive of school bonds and the interest thereon, the county shall provide from its county general fund such special relief apportionment to be made by the superintendent of public instruction.

(c) Subdivision 4(b) shall not apply to any district having more than 290 census children.

5. The provisions of this section for the semiannual apportionments in the calendar years 1918 and 1919 shall be carried out in the following manner:

(a) The amount apportioned for each teacher in this section under subdivision 2(a) shall be \$137.50 instead of \$150.

(b) The amount apportioned to each child in this section under subdivision 2(b) shall be \$2 instead of \$2.50. *As amended, Stats. 1917, 234; 1919, 154.*

3391. Apportionment of county school funds.

SEC. 152. 1. The superintendent of public instruction shall immediately after he has apportioned the state distributive school fund, as provided in this act, proceed to apportion the combined state distributive school fund and the county school fund belonging to each county among its several school districts as follows:

(a) To each district in the several counties \$375 for each teacher to which the district is entitled as provided in section 151, paragraph 1.

(b) He must further apportion on a per capita basis to each district \$5.50 for every child between the ages of six and eighteen years, in the school district as shown by the last preceding school census.

(c) He shall apportion the balance remaining in the combined state distributive school fund and county school fund, on a per capita basis in proportion to the number of school-census children in the county, as shown by the last preceding school census.

(d) He shall apportion the amounts of money due any joint school district formed of parts of two or more counties, in such manner that the counties concerned and the state shall each contribute the regular amounts per census child, and the money due such district on census teacher shall be apportioned to each county in proportion to the number of school-census children residing in that part of said joint school district.

(e) The moneys appropriated to each school district under the provisions of this act together with any moneys raised by special district tax for school maintenance shall be known as the district school fund of such district, and may be used to purchase sites, build, or rent schoolhouses, to purchase libraries, to pay teachers or contingent expenses, or for transportation of pupils to and from school, as the school board of such school district may deem proper; and the county treasurers and the county auditors of the several counties of the state shall keep account of said moneys as a single fund for each school district within their respective counties.

2. It shall be the duty of the board of county commissioners of each county not later than the April meeting, 1917, so as to provide funds under

this act for the school year 1917-1918, and annually thereafter at the time of levying their county taxes, to levy a county school tax sufficient to provide the moneys required for the apportionments to be made under this act. And the provisions of this act shall become effective for the first semiannual apportionment in the year 1918, at the time provided in sections 1 and 2 of this act.

3. Any money remaining in the state school reserve fund, and in any county school reserve fund on the 30th day of June and the 31st day of December of any year shall revert to the state distributive school fund and to the county school fund, respectively. *As amended, Stats. 1915, 386; 1917, 236; 1919, 156.*

3392. Duties of superintendent in distribution of funds.

SEC. 152½. On or before the 10th day of July of each school year the county auditor in each county shall report to the superintendent of public instruction the amount of moneys in the district school fund of each school district in his county.

The superintendent of public instruction shall, upon receipt of such report, deduct from the total amount of money to the credit of each of the school districts, all amounts over and above two hundred fifty dollars for each teacher assigned to said district on the basis of one teacher for every thirty census children or fraction thereof as shown by the last preceding school census. The amounts deducted as provided in this section shall be placed to the credit of the unapportioned county school fund of the county.

The superintendent of public instruction shall, at the time of making the deductions in accordance with this act, notify each county auditor and county treasurer of his actions, and the county auditor and county treasurer shall make such entries in their accounts as will show that such deductions have been made; *provided*, that this section shall not apply so as to remove from the funds of any school district any moneys derived from any source other than by apportionments from the state fund or the county fund.

If the trustees of any school district shall certify to the superintendent of public instruction that a new building, or repairs on an old school building, are necessary to the district, and that the trustees have been authorized by vote of the district, if a vote is required, to build such new school building, or to make such needed repairs, or that the balance in the funds of the district is necessary for the maintenance of school in the district, and that the trustees have estimated that the cost of such new school building, needed repairs, or school maintenance is to be dollars, the superintendent of public instruction shall make whatever investigation he may deem best, and if he shall become satisfied that such new building or repairs are necessary in the district, or that the balance of the funds in the district is necessary for the maintenance of school in the district, and that the amount estimated to be spent for such new building, repairs, or maintenance of school is a reasonable amount to be set aside for the purpose mentioned, he shall not make the deductions as provided in this section, but he shall make such deductions as will leave the funds in the district an amount equal to the estimated amount to be spent for such new building, repairs, or maintenance of school, together with two hundred and fifty dollars for each teacher assigned to that district upon the basis of one teacher for every thirty census children or fraction thereof as shown by the last preceding school census. *As amended, 1919, 157.*

An Act authorizing boards of county commissioners to transfer certain funds to the county school fund of school districts or to levy a special county tax in certain cases, and other matters properly connected therewith.

Approved March 17, 1913, 166

Commissioners may transfer school moneys—Special tax.

SECTION 1. The board of county commissioners of any county in Nevada may by resolution adopted at any regular or special meeting transfer from the county general fund to the county school fund of any district in said county such sum of money as they shall deem necessary, additional to that now provided by law for such district; *provided*, that such district shall have levied a special tax for the school year of at least twenty-five cents on the hundred dollars.

Aid for high-school work—Precedent conditions named.

SEC. 2. The board of county commissioners of any county, in their discretion, may aid a school district needing and desiring high-school work by transfer of money from the county high-school fund or the county general fund to the county school fund of such district; or they may levy a special county tax not exceeding ten cents on the hundred dollars for the benefit of said district; *provided*, that in either the case of transfer of money or of levy of special tax as herein provided the following precedent conditions shall in any year of proposed aid exist:

1. That there are ten or more pupils of high-school grade in such district that need high-school instruction and are desirous of having such instruction.

2. That the parents of such pupils, or a majority of them, find it impracticable to send them away for high-school training.

3. That the taxable property is so small that it is entirely insufficient to enable them to raise the money needed to provide and maintain needed high-school privileges.

4. That a special district tax of at least twenty-five cents on the hundred dollars has been levied.

3393-7. Repealed, Stats. 1919, 158, and, in lieu thereof, the following sections are inserted:

3393. Apportionment of district-school library fund.

SEC. 153. The trustees of each school district shall annually expend for library books a sum of money not less than five dollars for each teacher to which the district is entitled, and shall pay for them in the same manner as for other school supplies. The books so purchased shall be such as have been approved by the superintendent of public instruction under such rules and regulations as the state text-book commission may prescribe; *provided*, that districts of first class may purchase suitable books without such restrictions; *and provided further*, that in case any district shall have failed to expend the required amount by the close of the school year for library books as prescribed in this act, the superintendent of public instruction may deduct from the next semiannual apportionment of the county school fund due such district such part of the required expenditures for library books as the trustees of such district have failed to expend as required in this section, and the amounts so deducted shall be returned to the county school fund of the county in which such district lies. *As amended, Stats. 1919, 158.*

3394. Teacher's salary prior claim.

SEC. 154. The salaries of the teachers in the several school districts of

the state, as determined in the contract between such teachers and the boards of school trustees in the several districts, shall be a prior claim upon the school district fund of such districts. *As amended, Stats. 1919, 158.*

3405. Commission to make contracts.

SEC. 165. The text-book commission shall have power to make such contracts for the purchase and use of text-books in the name of the state as it shall deem necessary for the interests of the public schools. Such contracts shall set forth the introductory, exchange, and retail price of each text-book, and such prices shall not be less favorable than the prices at which such books are sold in any other state. And the contracts shall also provide that the state or any school district may purchase its books direct from the publishers of the same. In case payment for said books is delayed more than sixty days after delivery thereof, the account shall draw interest at the rate of six per cent per annum from the date of delivery until paid. *As amended, Stats. 1915, 352.*

3413-3434. Cited, *Dotta v. Hesson*, 38 Nev. 4 (143 P. 305).

An Act to provide for bonding counties for building and equipping county high schools and dormitories or for either one of these purposes, and other matters properly connected therewith.

Approved February 16, 1917, 17

Question of bonds submitted to voters, when—Special election, when.

SECTION 1. Whenever the county board of education in any county having a county high school shall certify to the board of county commissioners of such county that a new county high-school building or dormitory, or both of these, are needed, or that it is necessary to enlarge one or more of the buildings in use, or to acquire a new building site or additional land for necessary school purposes, or to purchase or acquire other necessary high-school equipment, and that the cost of the same is such that a bond issue for the purpose is advisable, and shall furnish the board of county commissioners with a definite statement of the amount of money needed therefor, said board of county commissioners is hereby authorized and directed to submit the question of bonding the county for the amount and purposes named to the voters of the county at the next general election; or said board may, in its discretion, order a special election if so requested by the county board of education.

Notice of election.

SEC. 2. The board of county commissioners may make an order for the bond election provided for in this act at any regular meeting or at a special meeting held not less than eight weeks before any general or special election, which election shall be noticed, held and conducted, and returns thereof made as and in the manner now provided by law for holding elections in the several counties of the state.

The election notice must contain:

First—The time and places of holding such election.

Second—The hours during the day in which the polls will be opened, which hours shall be the same as at general elections.

Third—The amount of the bonds, the rate of interest, not exceeding six per centum, and the number of years, not exceeding twenty, the bonds are to run.

Fourth—In what town or city the proposed new buildings or enlargements are to be erected or where a new building site or additional land is to be acquired, or where the proposed equipment is to be placed and used.

Fifth—The purpose or purposes for which the money realized from the sale of the bonds is to be used.

Sixth—Such other facts as may be necessary to fully inform the voters of the nature and purposes of the proposed bond issue.

There shall be placed upon one line of the printed ballots for such election the words "For the bonds," and immediately below upon another line on the ballot, the words "Against the bonds."

The method of indicating choice thereof shall be the usual method prescribed in this state.

Bond issue decided by election.

SEC. 3. If upon the official determination of the result of such election it shall appear that a majority of all the votes cast are "For the bonds," the board of county commissioners, as soon as practicable thereafter, shall issue the negotiable coupon bonds of the county in such form and denomination as the county board of education may direct, but not in conflict with the election notice thereof, said bonds to run for a period not to exceed twenty (20) years from the date of issue and to bear interest at a rate not exceeding six (6) per cent per annum, payable semi-annually, both principal and interest payable at such place as the board of county commissioners may direct. Before any of the bonds provided for in this act are sold, notice of the proposed sale must be given by publication in a newspaper of general circulation in the county for at least three weeks, inviting sealed bids to be made for said bonds, and the bonds shall be sold to the highest and best bidder, but in no event shall be sold for less than their par value.

Particulars regarding bonds.

SEC. 4. All bonds issued under the provisions of this act shall be signed by the chairman of the board of county commissioners, attested by its clerk, sealed with the seal of the county, and countersigned by the county treasurer; and each of the interest coupons attached to said bond shall be signed by the original or engraved facsimile signature of said chairman, clerk and treasurer.

Bonds to be registered.

SEC. 5. Before any county shall sell any bonds under the provisions of this act, all such bonds shall be delivered to the treasurer of the county to be duly registered by him in a book kept for that purpose in his office, which shall show the amount, the place and time of payment, and the rate of interest; and all such bonds shall bear the certificate of the county treasurer to the effect that they are issued and registered under the provisions of this act. After such registry the bonds shall be advertised for sale and sold by the county board of education for the purpose of raising funds for the objects designated in this act. All moneys derived from the sale of such bonds shall be paid to the county treasurer, and the said treasurer is hereby required to receive and safely keep the same in a fund hereby created and known as the "County High-School Building Fund," and to pay out said moneys in the manner now provided by law for payments from the "County High-School Fund" and for the purposes provided for in this act. The county board of education is hereby authorized and directed to use the money derived from the sale of said bonds, or such portion thereof as they may deem necessary, for the construction or enlargement of the high-school building or dormitory, or both, as the case may be, and for the purchase of property for a building site, agricultural gardens and other necessary school purposes; and any balance remaining in such fund after the accomplishment of the said purpose or purposes for

which said bonds are issued shall be converted into and become a part of the "County High-School Fund." Said county board of education shall determine as to the character and location, within the town or city as advertised, of said building or improvements and the materials and plans to be used therefor; or of the building site, additional land or high-school equipment; said board shall advertise for bids for the construction thereof and let the construction thereof by contract to the lowest responsible bidder, said board to have authority to reject any and all bids and to readvertise until a satisfactory bid is obtained. Should the holder of any bond or bonds issued under this act, for any cause whatever, fail to present the same to the county treasurer for payment when due, all interest thereon shall thereupon immediately cease.

Special county tax.

SEC. 6. Whenever a county shall issue and sell any bonds under the provisions of this act, it shall be the duty of the board of county commissioners to annually levy and assess a special tax on all the taxable property of such county, including the net proceeds of mines, in an amount sufficient to pay the interest accruing thereon promptly when and as same becomes due, according to the tenor and effect of said bonds, and the county treasurer shall collect the same as other taxes are collected, in cash only, keeping the same separate from other funds received by him, and shall cause said interest to always be promptly paid at the place of payment specified in the bonds; if there be any surplus after paying said interest, the treasurer shall without delay pass the same to the credit of the county high-school fund, and such money so passed to the credit of said fund, shall be subject to the disposal of the county board of education; and annually thereafter, provided the board of county commissioners so determine, until the full payment of such bonds has been made, the board of county commissioners shall levy and assess a special tax, and shall cause such special tax to be collected on all the taxable property of the county, including the net proceeds of mines, sufficient to raise annually a proportion of the principal of said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds then have to run, which amount shall be levied and assessed as aforesaid, and shall be collected by the county treasurer in the same manner as the tax for the payment of the interest coupons, and when collected shall be known as the "County High-School Bond Sinking Fund" and shall be used only for the payment of said bonds which said county treasurer shall cause to be paid at the place of payment specified in such bonds. The sinking fund thus created may be applied to the purchase and cancelation of the outstanding bonds provided for in this act before the same become due. At the maturity of such bonds the county treasurer shall call in and pay them with the interest accrued thereon, and shall duly cancel each bond and certify his action to the board of county commissioners and county board of education. In the event the funds to pay interest are not collected in time to permit the payment of the interest on said bonds when the same shall become due, the county treasurer shall pay the amount due out of the general county fund and then reimburse said fund for the amount so borrowed from it when said interest funds are collected.

Maximum bonding limits.

SEC. 7. The maximum bonding limit of counties for county high-school purposes under the provisions of this act shall be as follows:

1. For counties having a total assessed valuation of two million five hundred thousand (\$2,500,000) dollars or less, two and one-half per cent of such valuation.

2. For counties having an assessed valuation of over two million five hundred thousand (\$2,500,000) and less than five million (\$5,000,000) dollars of assessed valuation, two per cent of such valuation.

3. For counties having an assessed valuation of five million (\$5,000,000) dollars and less than ten million (\$10,000,000) dollars of assessed valuation, one and one-half per cent of such valuation.

4. For counties having ten million (\$10,000,000) dollars or over of assessed valuation, one per cent of such valuation.

Change in lines of county not to affect bonds.

SEC. 8. No change in the boundary lines of any county shall release the taxable real property of the county from assessment and levy of the taxes to pay the interest and principal of such bonds, and if there shall be any change in the boundary of such county so as to leave out any portion of the taxable real property of the county which was subject to taxation in the county at the time of the issue of such bonds, the assessment and levy of taxes for the payment of the principal and interest of such bonds shall be made on such property as if it were still within the county, and shall be collected in like manner, and if there shall be any change of the boundary lines of such county so as to annex or include any taxable or real property, after the issue of such bonds, the real property so included or annexed shall thereafter be subject to the assessment and levy of a tax for the payment of the principal and interest of such bonds.

Taxes a lien on property.

SEC. 9. All taxes levied and assessed as in this act provided shall constitute a lien on the property charged therewith, from the date of the levy thereof by the county commissioners, or the entry thereof on the assessment roll of the county auditor, until the same are paid, and thereafter, if allowed to become delinquent, shall be enforced in the same manner as is now provided by law for the collection of state and county taxes. And no additional allowance, fee, or compensation whatever shall be paid to any officer for carrying out the provisions of this act.

Bonds declared valid.

SEC. 10. All bonds authorized or issued under the provisions of law existing prior to the passage of this act are hereby declared to be valid and the county board of education is hereby authorized to use the proceeds derived from the sale thereof for any or all of the purposes hereinbefore mentioned.

An Act to provide for the establishment of branch county high schools under certain conditions, in counties having a county high school, and other matters properly connected therewith.

Approved March 17, 1915, 188

Branch county high schools authorized.

SECTION 1. The board of county commissioners of any county in the state having a county high school or schools may establish a branch county high school, and it shall be the duty of the county commissioners to do so whenever the county board of education of such county shall certify that the conditions named in section 2 of this act exist and are complied with.

County aid, how secured—Petition, form of.

SEC. 2. Whenever a school district in a county having a county high school or county high schools is in need of and desires county aid for securing or maintaining full high-school instruction and privileges for its

children; it may, through its board of trustees, petition the county commissioners to establish in the district a branch county high school. The petition shall set forth the following facts:

1. That said district has already in attendance in its high school twenty or more properly qualified high-school pupils and full high-school work is being done;

2. That the income of the district from county and state apportionments is insufficient for giving such pupils necessary high-school instruction, and that its assessed valuation is too small for it to raise the needed funds from special district taxation;

3. That the district is situated forty miles or more from the county high school, and the parents are unable to send their children to the county high school;

4. That the district is able to and will provide the necessary rooms or buildings for all the high-school work;

5. That the district asks for the establishment therein of a branch county high school under the management and the control of the county board of education.

Under control of county board of education.

SEC. 3. Any branch county high school that may be established under the provisions of this act shall be under the full control and management of the county board of education, and it shall be governed in its powers and duties in reference to the said branch county high school by the provisions contained in the Revised Laws of Nevada, 1912, sections 3419, 3420, 3421, 3422, and 3423 (School Code, sections 179, 180, 181, 182, and 183).

Not in conflict with certain act.

SEC. 4. None of the provisions of this act shall in any wise impair or abrogate the provisions of "An act authorizing boards of county commissioners to transfer certain funds to the county school fund of school districts, or to levy a special county tax in certain cases, and other matters properly connected therewith," as found in the Statutes of Nevada, 1913, pages 166 and 167 (School Code, 1913, pages 73 and 74).

An Act to authorize county commissioners in counties not having high schools, to aid district high schools under certain conditions, and other matters properly connected therewith.

Approved March 9, 1915, 97

Where a board of county commissioners had complied with Rev. Laws, 3618, it was an ultimate act in pursuance of that section and Rev. Laws, 3762, 3763, relating to their duties "to levy annually," such statutes contemplating but one annual levy; consequently mandamus would not lie to compel a levy under this statute, the proper construction of this act being that the levy should be made at the time when the county levy is regularly made. State ex rel. Reno School District v. Washoe County Commissioners, 38 Nev. 269, 270 (149 P. 191).

High-school tax in such counties.

SECTION 1. In any county in which no county high school is located, the county commissioners at the time of making the annual levy for said county, if petitioned by the board of trustees of the district high school in any county having but only one duly organized high school, or the several boards of trustees of district high schools in counties having more than one such high school, shall levy a county tax for high-school purposes of not less than fifteen cents (15c), or such part thereof as is shown in said petitions to be necessary, on the hundred dollars (\$100) of assessed valuation of the county, for the benefit of any district high school or schools that comply with the following conditions:

1. That the said high school or schools shall have standard courses in commercial work or manual arts or domestic arts, or standard courses in agriculture;

2. That the board of school trustees of the district or districts having high schools as described in paragraph 1 of these conditions shall each have levied a special district tax of not less than fifteen (15c) cents on the hundred (\$100) dollars of the assessed valuation;

3. That the board of school trustees of each district interested shall have passed a resolution opening their high school to all properly qualified students of the county; if on approval of this act the tax levy for 1919 shall have been fixed by the board of county commissioners as required by law, the board of county commissioners of all counties affected by this act are hereby required to change said tax levy to the fifteen-cent (15c) tax herein provided for if petitioned by the board of school trustees or boards of school trustees so to do within ten days after the passage and approval of this act. *As amended, Stats. 1919, 162.*

Method of apportionment.

SEC. 2. In counties having more than one district high school affected by the provisions of this act, the amount raised by the county for high-school purposes, as provided in section 1 hereof, shall be apportioned by the state superintendent of public instruction at the time of each semi-annual apportionment of the state and county school moneys in January and July, on the following basis: Said amount shall be divided between the several district high schools in proportion to the number of high-school teachers employed during the school year last preceding that in which the apportionment is made, excepting as hereinafter provided. No school having an enrollment of less than fifty pupils shall receive an apportionment for more than one teacher for each ten pupils enrolled. No school having an enrollment of more than fifty pupils and less than one hundred pupils shall receive an apportionment on an excess of one teacher for each twelve pupils enrolled. No school having an enrollment of more than one hundred and less than one hundred and fifty pupils shall receive an apportionment on an excess of one teacher for each fifteen pupils enrolled. No school having an enrollment of more than one hundred and fifty shall receive an apportionment on an excess of one teacher for each eighteen pupils. Nothing in this section shall be construed to prevent any school from employing as many teachers as may be deemed necessary by the board of trustees thereof. It is hereby provided that the money so apportioned shall be kept by the treasurer and auditor in separate funds for each high-school district and shall be used for high-school purposes and no other. *As amended, Stats. 1919, 163.*

Dormitory and dining-hall.

SEC. 3. The board of school trustees of any district availing itself of the benefits of this act is hereby empowered to provide for the rental, purchase, or erection of a suitable dormitory or dormitories and dining-hall for high-school students whose homes are outside of a district having a high school in said county, and to provide for the comfort, maintenance, and management of the same. The said dormitory or dormitories shall be considered part of the regular high-school equipment and organization.

An Act to provide for civic and physical training and instruction in the high schools of Nevada, and matters properly connected therewith.

Approved March 21, 1917, 245

Such training authorized.

SECTION 1. It is hereby made the duty of all school officers in control

of public high schools in the State of Nevada to provide for courses of instruction designed to prepare the pupils for the duties of citizenship, both in time of peace and in time of war. Such instruction shall include: (1) Physical training designed to secure the health, vigor, and physical soundness of the pupil; (2) Instruction relative to the duties of citizens in the service of their country. It shall be the aim of such instruction to inculcate a love of country and a disposition to serve the country effectively and loyally.

Special teacher, when.

SEC. 2. All boards of education or boards of school trustees of county or district high schools offering a four years high-school course are hereby empowered to employ teachers of physical training who shall devote all or part of their time to physical instruction for both boys and girls.

State tax authorized.

SEC. 3. In order to assist in the payment of salaries of said physical-training instructors there shall be levied on the passage of this act an ad valorem tax of five mills on the hundred dollars of assessed valuation of all the taxable property of the state.

Superintendent of public instruction to apportion money—Restriction.

SEC. 4. The state superintendent of public instruction, at the time of the apportionment of other state school funds, shall apportion the funds derived from the levy as provided in section 2 of this act on the basis of the high-school enrollment of the preceding school year, as follows: Three hundred dollars for each one hundred pupils, or fraction thereof, enrolled in any high school partaking of the benefits of this act; but no high school shall receive such apportionment unless a legally licensed teacher of physical training is employed therein.

3428. Graduation certificate.

SEC. 188. The certificate of graduation shall entitle the holder thereof to a county normal second-grade elementary certificate good for three years and entitling the holder to teach in the elementary schools of the state. *As amended, Stats. 1913, 158.*

3431. Authorizing issuance of bonds.

SEC. 191. Any school district of the state, now existing or which may hereafter be created, is hereby authorized to borrow money for the purpose of erecting and furnishing a school building, or buildings, maintaining the same, purchasing grounds on which to erect such building or buildings, or for refunding floating or bonded indebtedness, whenever the board determine that it can be done to advantage of the district, or for any, all or either of these purposes, by issuing the negotiable coupon bonds of the district in the manner by this act approved. *As amended, Stats. 1913, 297.*

3434. School trustees to act—Sale of bonds.

SEC. 194. If upon the official determination of the result of such election it appear that a majority of all the vote cast is "for the bonds," the board of trustees shall, regardless of any of the provisions of subdivisions 2 and 4 of section 67 of the act hereby amended, and as soon as practicable, and for the purpose stated in the notice of election, issue the negotiable coupon bonds of the district in such form and denomination as the board of trustees may direct, said bonds to run for a period not to exceed twenty (20) years from the date of issue, and bearing interest at a rate not exceeding six (6) per centum per annum, payable semiannually,

both principal and interest payable at such place as the board of trustees shall direct; the said bonds not to be sold for less than their par value. And before said sale is made, notice of such proposed sale must be given by publication, in a newspaper, if there is a newspaper published in the district, for at least one week before said bonds are disposed of, inviting sealed bids to be made for said bonds, and said bonds are to be sold to the highest and best bidder for said bonds; the board, however, may reserve the right to reject any and all bids and sell the bonds at not less than their par value and at private sale, if they deem it for the best interests of the district; *provided*, if there is no newspaper published in said school district, the notice herein provided for shall be given by posting in three public places in said school district for at least ten days before said bonds are disposed of. *As amended, Stats. 1913, 298.*

3435. Bonds to be signed and sealed.

SEC. 195. All bonds issued under the provisions of this act shall be signed by the chairman of the board of trustees, attested by the clerk thereof, sealed with the district seal, and countersigned by the county treasurer; and the interest coupons to be attached thereto shall be signed by the original or engraved facsimile signatures of said chairman, clerk and treasurer. *As amended, Stats. 1913, 298.*

3436. Bonds to be registered.

SEC. 196. Before any district shall issue bonds under the provisions of this act, all such bonds shall, by the county treasurer, be registered in a book kept for that purpose in his office, which registry shall show the school district, the amount, the time of payment, and rate of interest, and all such bonds shall bear the certificate of the county treasurer to the effect that they are issued and registered under the provisions of this act. After such registry, the county treasurer shall cause said bonds to be delivered to the purchasers of the same from the board of trustees, upon payment being made therefor. *As amended, Stats. 1913, 298.*

3437. Special bond tax.

SEC. 197. Whenever any school district shall issue any bonds under the provisions of this act, or shall have any bonds outstanding, it shall be the duty of the board of county commissioners of the county in which such district may be situated to levy and assess a special tax on all the taxable property of the district, including the net proceeds of mines, in an amount sufficient to pay the interest accruing thereon promptly when and as the same becomes due according to the tenor and effect of said bonds, and the county treasurer shall collect the same as other taxes are collected, in cash only, keeping the same separate from the other funds received by him, and shall cause said interest to be promptly paid at the place of payment specified in the bonds; and if there shall be any surplus after paying said interest and the expenses of collecting such special tax, the treasurer shall, without delay, pass the same to the credit of such school district, and such funds so passed to the credit of the district shall be subject to the disposal of the board of trustees; and in the calendar year following the year in which the bonds are issued, and annually thereafter, until the full payment of said bonds has been made, the board of county commissioners of the county in which said school district is situated shall levy and assess a special tax, and shall cause said special tax to be collected, on all the taxable property of the school district, including the net proceeds of mines, sufficient to raise annually a proportion of the principal amount of the said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds then have to run, which amount shall be levied, assessed, and collected by the

county treasurer in the same manner as the tax for the payment of the interest coupons and when collected shall be known as the "..... School District Bond Sinking Fund" and shall be used only in the payment of such bonds. The sinking fund thus provided may be applied to the purchase and cancelation of the outstanding bonds of the district. At the maturity of such bonds (or prior to the maturity thereof as hereinafter in section 2 hereof provided) and at their place of payment, the county treasurer shall cause such bonds and accrued interest thereon to be paid, and duly cancel the same, and certify his action to the board of trustees of the school district; and the said county treasurer shall, if the tax for interest on the bonds for the first year after their date of issue is not collected in time for use in paying the interest coupons maturing during that year, pay the interest accruing on said bonds in said year out of the general county fund and return, as soon as the funds are realized from the taxes for interest on said bonds, and from said interest fund, the amount so borrowed from said general county fund. *As amended, Stats. 1913, 298; 1915, 59.*

Redemption of bonds.

SEC. 197A. In the event that there shall be in the hands of the county treasurer in such school district bond sinking fund, a sufficient sum to redeem one or more of such bonds, and to pay the accrued interest thereon, although before the maturity of such bonds and interest, he shall, if requested by the board of trustees of such school district so to do, post a notice in a conspicuous place in the main entrance to his office or the main entrance to the building in which his office may be situated, which notice shall state that the said county treasurer has on hand in the "..... School District Bond Sinking Fund" sufficient funds to redeem..... bonds of said issue, and that there is in the said bond interest fund sufficient funds to pay the accrued interest on such number of bonds, and that he will on a certain day and hour (which shall not be sooner than thirty days from the date of posting such notice), at his office, receive proposals for the purchase of such number of bonds and paying the accrued interest thereon; upon the opening of said proposals the bid of the person offering the requisite number of bonds at the lowest rate shall be accepted by such treasurer; *provided*, that such offer to sell said bonds shall not involve a premium on the same of more than..... per cent; if the entire issue of such bonds are provided to mature serially at different times, the treasurer shall redeem such bond or bonds at the lowest regular premium which matures first. If the entire issue of such bonds is provided to mature at one time, among equal offers for the sale of said bonds at the same rate of premium the treasurer shall redeem such bond or bonds presented bearing the lowest serial number. The said treasurer shall certify all his actions hereunder to the board of trustees of said school district as in section 197 of this act provided. *Added, Stats. 1915, 60.*

3462-72. Repealed, Stats. 1913, 125, and following act (Stats. 1913, 124) substituted:

An Act to provide books, equipment, and materials free of charge to the pupils of the public schools and to provide for and encourage the economic use thereof, and fixing penalties for its infraction, and repealing an act in conflict herewith.

Approved March 14, 1913, 124

Trustees to furnish.

SECTION 1. The board of trustees of each district shall purchase all new text and supplementary school books and school supplies to be used by the

pupils of such district, and the cost of the same shall be a legal charge against the county school fund belonging to such district.

Remain property of district.

SEC. 2. All books purchased by the district board shall be held as property of the district, except as herein provided, and shall be loaned to the pupils of the school in said district while pursuing a course of study therein.

Parents and guardians responsible for books—Rules.

SEC. 3. The parents and guardians of pupils shall be responsible for all books loaned to the children in their charge, and shall pay to the clerk of the board of trustees, or other person authorized by the board of trustees to receive the same, the full purchase price of every such book destroyed, lost, or so damaged as to make it unfit for use by other pupils succeeding to their classes. The board of trustees shall establish reasonable rules and regulations governing the care and custody of the said books, and for the payment of fines for injuries to the books.

Other equipment and materials.

SEC. 4. Equipment and materials for use in manual training, industrial training, and teaching domestic science may be supplied to the pupils in the same manner out of the same fund and on the same terms and conditions as books; *provided*, that no private ownership can be acquired in such equipment or material unless sold in the manner prescribed by law, when such equipment or material shall be no longer used or required for the schools of the district.

Teachers' desk-books free.

SEC. 5. Authorized supplementary and desk-books for the use of teachers shall be purchased under this act, and shall remain the property of the school district for which they were purchased, unless sold in accordance with the provisions of this act.

May be sold.

SEC. 6. Text-books and supplementary books may be sold for cash.

Disposition of moneys received.

SEC. 7. It shall be the duty of the clerk of the board of trustees to turn over to the county treasurer, within thirty days after receiving the same, all moneys collected under the provisions of this act, and the same shall be credited to the county fund of the district from which it came.

Penalty for violation.

SEC. 8. Every person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than twenty dollars or imprisoned in the county jail not more than ten days, or both so fined and imprisoned.

Certain act repealed.

SEC. 9. An act entitled "An act to provide books, equipment and materials, and to encourage the economic use thereof by the pupils of the public schools, and fixing penalties for its infraction," approved March 22, 1909, is hereby repealed.

3473-7. Repealed, 1917, 254.

See "An act regulating the fiscal management of counties, cities, towns, school districts, and other governmental agencies," Stats. 1917, 249, ante.

3478. Fees from national forest reserves.

WHEREAS, Under the provisions of the act of Congress, approved May

23, 1908 (35 Stat. 260) "twenty-five per centum of all money received from each forest reserve during any fiscal year, including the year ending June 30, 1908, shall be paid at the end thereof by the secretary of the treasury to the state or territory in which said reserve is situated, to be expended as the state or territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated; *provided*, that when any forest reserve is in more than one state or territory or county the distributive share to each from the proceeds of said reserve shall be proportioned to its area therein."

Distribution of fees from national forest reserves.

SECTION 1. That the sum or sums paid to the state by the secretary of the treasury of the United States hereafter, under the provisions of acts of Congress now in force or to be made pertaining to moneys received from forest reserves mentioned in the preamble of this act, shall be distributed respectively to the county or counties in which the forest reserves are situated, to be expended for the benefit of the public schools and public roads of such county or counties in equal proportion for each object, and the proportion for schools shall be paid into the county school fund and the proportion for roads shall be paid into the county road fund, if there be such funds, otherwise into the county general fund for public-school and public-road purposes respectively. When any forest reserve is in more than one state or county the distributive share to each shall be proportional to its area therein, following as near as may be the figures submitted to the State of Nevada respecting net forest area and county acreage therein by the forester of the forestry service, United States department of agriculture. *As amended, Stats. 1919, 262.*

An Act to provide for the establishment of evening schools.

Approved March 24, 1917, 354

May be authorized.

SECTION 1. The state superintendent of public instruction shall authorize any local board of school trustees to establish evening schools in any school district whenever fifteen or more bona-fide applicants residing therein shall petition him in writing for the same. Such schools shall be open to native and foreign-born youths and adults, and the courses of instruction therein given shall be approved by the state board of education.

Board to employ teachers.

SEC. 2. The board of trustees in any district in which such evening school is held shall employ the necessary teachers therefor; and said board shall also provide suitable rooms with adequate lighting and heating. Teachers employed in such evening schools must hold legal certificates for corresponding work in the public day schools, or special evening-school certificates, which are hereby authorized, from the state board of education.

Number of teachers limited—Compensation.

SEC. 3. No more than one teacher shall be employed for each fifteen persons enrolled in any such evening school. At the end of each school month the board of trustees having charge thereof shall certify the month's enrollment and average nightly attendance to the state superintendent of public instruction. The State of Nevada shall pay said teachers at the rate of not more than one dollar per hour of actual teaching in said evening schools, or not more than forty dollars per month; *provided*, that when the average monthly attendance falls below ten students per teacher

a sufficient number of teachers must be retired to maintain such an average.

SEC. 4. [Carrying appropriation; omitted.]

Indebtedness, how paid.

SEC. 5. On the written orders of a board of school trustees having established an evening school the county auditor shall issue warrants upon the county treasurer for the payment of just claims for equipment and maintenance, and for additional salary of teachers in amounts not to exceed those paid such teachers by the state, all of which claims are hereby made just and legal charges against the general fund of the county; and the county treasurer is hereby authorized and directed to pay the same.

An Act to provide for the establishment, equipment, and maintenance of kindergarten departments in the public schools.

Approved March 13, 1915, 126

Kindergartens established, how—Special tax, when—Kindergarten fund.

SECTION 1. The board of school trustees of every school district in this state may, upon petition of the parents or guardians of twenty-five or more children between the ages of four and six years, residing within such school district, establish, equip, and maintain a kindergarten or kindergartens. The board of school trustees of every school district in which a kindergarten is established under the provisions of this act shall, at least fifteen days before the month in which the board of county commissioners is required by law to levy the taxes required for county purposes, submit to the board of county commissioners an estimate of funds necessary for the establishment, equipment, and maintenance of such a kindergarten or kindergartens in their districts; and, if sufficient funds for the same are not available in the school funds of such school district, the said board of county commissioners shall have power to direct that a special tax, not to exceed twenty-five cents on the hundred dollars of assessed valuation of such district, shall be levied; and upon notification by the clerk of the board of trustees of such school district that such action has been taken, the board of county commissioners shall levy and cause to be collected such tax upon the taxable property of the district. The fund so levied shall be known as the kindergarten fund of.....school district (as the case may be), and shall be available for the equipment and maintenance of the kindergarten or kindergartens established under the provisions of this section, and the moneys drawn from such fund shall be paid out in the same manner as moneys from the state and county school funds for the maintenance of the elementary schools are drawn and paid out. If the average daily attendance in any kindergarten in any school district shall be ten or less for the school year, the governing body for such school district shall, at the close of such school year, discontinue such kindergarten. In case a kindergarten shall be discontinued, as provided by this section, the property and funds of such kindergarten shall immediately revert to the elementary schools of the school district in which said kindergarten has been located.

An Act to provide for the establishment of part-time schools and classes and to compel attendance of minors upon such schools and classes.

Approved March 25, 1919, 148

Part-time schools provided.

SECTION 1. The school board of any school district in which there shall reside or be employed, or both, not less than fifteen children over fourteen

years of age and less than eighteen years of age who have entered upon employment, shall establish part-time schools or classes for such employed children.

Education for employed children.

SEC. 2. A part-time school or class established in accordance with the terms of this act shall provide an education for children who have entered employment which shall be either supplemental to the work in which they are engaged, continue their general education, or promote their civic and vocational intelligence.

Certain children must attend school.

SEC. 3. All children of the state shall attend school until the age of eighteen unless they are employed and are excused from attendance in accordance with terms of subdivisions 1, 3, and 5 of section 203, chapter 133, Statutes of 1911.

Certificate presented to employer.

SEC. 4. The school board of any school district, or person or persons designated by them, shall issue to any child over the age of fourteen years a certificate giving the age of the child as it appears upon the register of the school which he has been attending, the grade which he has attained, and his place of residence, which certificate shall be presented by him to the employer of any minors.

Employer must keep list of children employed.

SEC. 5. The employer of any minors under eighteen years of age shall keep a list of minors so employed and shall keep on file the certificate issued by the school authorities, and shall notify the school board of the district in which the child last attended school of such employment. Upon the discharge of any such employed minor, the employer shall return within ten days the certificate issued by the board of education, to the school board issuing such certificates.

When school board excused.

SEC. 6. Whenever any school board shall deem it inexpedient to organize part-time schools or classes for employed minors, it shall state the reasons for such inexpediency in a petition to the state director for vocational education, and when the state board for vocational education, upon the recommendation of the state director, shall judge such reasons to be valid, the school board shall be excused from the establishment of such part-time schools or classes.

What time in session. .

SEC. 7. Part-time schools or classes established in accordance with the provisions of this act shall be in session not less than four hours a week between the hours of eight a. m. and six p. m. during the number of weeks which other public schools are maintained in the district establishing such part-time schools or classes.

State board to make rules.

SEC. 8. The state board for vocational education shall establish rules and regulations governing the organization and administration of part-time schools and classes, and shall expend from the funds appropriated for the promotion of vocational education such sums of money as are necessary for the proper enforcement of this act.

School hours counted as part of legal employment hours.

SEC. 9. Whenever the number of hours for which a child over fourteen

years and less than eighteen years of age may be employed shall be fixed by federal or state law, the hours of attendance upon a part-time school or class organized in accordance with the terms of this act shall be counted as a part of the number of hours fixed for legal employment by federal or state laws.

Parents, guardians, must send children.

SEC. 10. Every parent, guardian or other person in the State of Nevada, having control of any child or children between and including the ages of fifteen and seventeen and at work, shall be required to send such child or children to a part-time school or class whenever there shall have been such part-time school or class established in the district where the child resides or may be employed unless excused in accordance with the provisions of section 3 of this act.

Penalty for culpable parent or guardian.

SEC. 11. In case any parent, guardian or other person in the State of Nevada having control or charge of any child or children between and including the ages of fifteen and seventeen shall fail to comply with the provisions of this act, he shall be deemed guilty of a misdemeanor and shall, on conviction thereof, be subject to a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), or by imprisonment in the county or city jail not less than two nor more than ten days, or by both such fine and imprisonment at the discretion of the court.

Penalty for culpable employer.

SEC. 12. Any person, firm, or corporation employing a child between the ages of fourteen and eighteen years shall permit the attendance of such child upon a part-time school or class whenever such part-time school or class shall have been established in the district where the child resides or may be employed, and any person, firm or corporation employing any child over fourteen and less than eighteen years of age contrary to the provisions of this act shall be subject to a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100) for each separate offense.

Truant officers to enforce.

SEC. 13. The officers charged by the law with responsibility for the enforcement of the attendance upon regular public schools of children over eight years of age shall also be charged with the responsibility for enforcement of attendance upon part-time schools and classes of children over fourteen and less than eighteen years of age in accordance with the terms of this act.

Districts to be reimbursed.

SEC. 14. Whenever any part-time school or class shall have been established in accordance with the provisions of this act with the rules and regulations established by the state board for vocational education, and shall have been approved by the state board for vocational education, the district shall be entitled to reimbursement for the expenditures made for the salaries of teachers and coordinators of such part-time school or class for not less than fifty per cent of the moneys expended, such reimbursement to be made from federal and state funds available for the promotion of vocational education.

Effective, when.

SEC. 15. This act shall be in full force and effect on and after September 1, 1919, and shall refer only to the establishment of part-time schools or classes for minors under eighteen years of age who are issued permits to enter upon employment after that date.

Disposition of fines.

SEC. 16. All fines collected under the provisions of this act shall be paid into the permanent school fund of the state.

An Act to reaffirm "An act to accept the benefits of an act passed by the senate and house of representatives of the United States of America, in Congress assembled, to provide for the promotion of vocational education, approved February 23, 1917," approved March 24, 1917.

Approved March 25, 1919, 150

Accepting terms of U. S. Act.

SECTION 1. That the State of Nevada hereby reaffirms its acceptance and assent to the terms and provisions of the act of Congress entitled "An act to provide for the promotion of vocational education, to provide for cooperation with the states in the promotion of such education in agriculture and the trades and industries; to provide for cooperation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure," as enacted into law by the legislature of the State of Nevada and approved March 24, 1917 [397].

State treasurer custodian of funds.

SEC. 2. That the state treasurer is hereby designated and appointed custodian of all moneys received by the State of Nevada from the appropriation made by said act of Congress, and he is authorized to receive and provide for the proper custody of the same and to make disbursements thereto in the manner provided in the said act and for the purposes therein specified. He shall also pay out any moneys appropriated by the State of Nevada for the purpose of carrying out the provisions of this act upon the order of the state board for vocational education.

State board for vocational education.

SEC. 3. That the state board of education is hereby designated as the state board for vocational education.

State superintendent executive officer.

SEC. 4. That the state superintendent of public instruction shall serve as executive officer of the state board for vocational education and shall designate, by and with the advice and consent of the state board for vocational education, such assistance as may be necessary to properly carry out the provisions of this act. The superintendent of public instruction shall also carry into effect such rules and regulations as the state board for vocational education may require. He shall also maintain an office for the board in the state capitol and shall keep all records of the board in that office.

Powers of state board.

SEC. 5. That the state board for vocational education shall have all necessary authority to cooperate with the federal board for vocational education in the administration of the said act of Congress; to administer any legislation pursuant thereto enacted by the State of Nevada; and to administer the funds provided by the federal government and the State of Nevada under the provisions of this act for the promotion of vocational education in agricultural subjects, trade and industrial subjects, and home economics subjects.

(a) The state board for vocational education shall have full authority to formulate plans for the promotion of vocational education in such subjects as an essential and integral part of the public-school system of education in the State of Nevada and to provide for the preparation of teachers of such subjects.

(b) The state board for vocational education shall have authority to fix the compensation of such officials and assistants as may be necessary to administer the federal act and this act for the State of Nevada, and pay such compensation and other necessary expenses of administration and travel from funds appropriated in this act.

(c) The state board for vocational education shall have authority to make studies and investigations relating to vocational education in such subjects; to promote and aid in the establishment by local communities of schools, departments or classes giving training in such subjects; to cooperate with local communities in the maintenance of such schools, departments, or classes; to prescribe qualifications for the teachers, directors and supervisors of such subjects and have full authority to provide for the certification of such teachers, directors and supervisors; to cooperate in the maintenance of classes supported and controlled by the public for the preparation of the teachers, directors and supervisors of such subjects, or to maintain such classes under its own direction and control; to establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers.

Meetings.

SEC. 6. The state board for vocational education shall hold at least four stated meetings per year as follows: On the fourth Monday of December; on the fourth Monday of March; on the fourth Monday of June; and on the fourth Monday of September, and at such other times as may be designated by the state executive officer of the board or upon the request in writing of a majority of the members of the board.

Districts and counties may maintain.

SEC. 7. Any district or county school board may establish and maintain vocational schools or classes, giving instruction in agricultural subjects, trade or industrial subjects, or home economics subjects, and may raise and expend money for the establishment and maintenance of such vocational schools or classes in the same manner in which moneys are raised and expended for other school purposes, and moneys so raised may be expended in providing vocational education as outlined in this act.

To share in federal and state funds.

SEC. 8. Whenever any school or classes have been organized in accordance with rules and regulations adopted by the state board for vocational education and shall have been approved by the state board for vocational education, they shall be entitled to share in federal and state funds available for the promotion of vocational education to an amount not less than fifty per cent of the moneys expended for the salaries of the teachers of vocational subjects in such approved schools or classes.

SEC. 9. [Carrying appropriation; omitted.]

Board to report.

SEC. 10. The state board for vocational education shall make a report biennially to the legislature setting forth the condition of vocational education in the State of Nevada, a list of the schools to which federal and state aid has been given, and a detailed statement of the expenditures of the federal funds and state funds provided in section 8 of this act.

An Act to provide for the administration of vocational education funds.

Approved March 23, 1917, 322

Appropriation, how made.

SECTION 1. The state board of education, acting as a state vocational education board, shall appropriate money to local communities for the teaching of agriculture and of trades and industries and household economics subjects only on the basis of an equal contribution by each community for the purpose of such instruction organized under provisions acceptable to the federal board of vocational education.

An Act compelling attendance of children at schools where tuition, lodging, food and clothing are furnished at the expense of the United States, and repealing all acts and parts of acts in conflict herewith.

Approved March 28, 1919, 334

Attendance made compulsory.

SECTION 1. That whenever the government of the United States erects, or causes to be erected and maintained, a school for general educational purposes, within the State of Nevada, and the expense of the tuition, lodging, food and clothing of the pupils therein is borne by the United States, it shall be compulsory on the part of every parent, guardian, or other person in the State of Nevada having control of a child or children between the ages of eight and twenty years, eligible to attend said school, to send such child or children to said school for a period of ten months in each year, or during the entire annual term; *provided*, that in case the government of the United States does not make provision for the free transportation of said child or children from their homes to said school, then he, she or they shall not be liable to the provisions of this act, unless they reside less than ten miles from such school.

Superintendent of said school to make demand.

SEC. 2. It shall be the duty of all principals or superintendents of the school or schools mentioned in this act, before attempting to enforce the provisions of this act, hereinafter mentioned, to serve, or cause to be served, a demand for the attendance of certain children, naming or otherwise identifying them, and also designating the school to which their attendance is required, upon the parent, guardian, or other person having charge of said child or children as may be eligible to attend said school over which he has charge, and such parent, guardian or other person having charge of said child or children shall have two days to either deliver said child or children at said school, or to the accredited representative of said school if more than ten miles distant from the residence of said child or children, or to furnish satisfactory proof that the bodily or mental condition of such child or children is such as to prevent his attendance, or cause him or them to be ineligible for enrollment.

Legal action, when.

SEC. 3. If, at the expiration of two days after such notice or demand, the parents, guardian or other person having charge of said child or children shall have failed or refused to comply with said notice, the principal or superintendent shall take action to compel compliance with this act.

Penalty for guilty parent or guardian.

SEC. 4. Any parent or guardian, or other person having control or charge of any child or children, failing to comply with the provisions of

this act, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50), or imprisonment in the county jail not less than five days nor more than twenty-five days for the first offense; and for each subsequent offense said parent, guardian or other person shall be liable to a fine of not less than twenty-five dollars (\$25) or more than fifty dollars (\$50), or to imprisonment in the county jail not less than twelve days or more than twenty-five days; *provided*, that another proceeding may be begun at the expiration of three days after each refusal of said parent, guardian or other person to comply with the demand of said principal or superintendent.

Peace officers to assist.

SEC. 5. It shall be the duty of all sheriffs, constables, policemen, town and city marshals in the state to assist principals and superintendents of schools in carrying out the provisions of this act.

Penalty for interference.

SEC. 6. Any person or persons who shall directly or indirectly persuade, advise or intimidate in any manner the parent or guardian of any child or children coming under the provisions of this act from complying with the demand of a principal or superintendent of a school who is endeavoring to carry out the provisions of this act, shall be guilty of the same offense and shall be subject to the same fines and punishments as the parent or guardian; *provided*, that this section shall not apply to the attorney or legal adviser of any parent or guardian giving advice in his legal capacity.

Runaways, disposition of.

SEC. 7. Any inmate of any such school who runs away therefrom shall be deemed a truant therefor and may be committed to the Nevada school of industry upon application to the district court of the county within which such school is located.

An Act providing for the division of Clark County, Nevada, into educational districts and providing for the government of the schools therein.

Approved March 29, 1919, 218

Division of county—Boundaries of districts.

SECTION 1. Clark County of the State of Nevada is hereby divided into two educational districts as follows:

District No. 1 shall include all territory in Clark County lying east and north of the division line described as follows: Beginning at the point where the range line between range sixty-three (63) and sixty-four (64) east intersects the north boundary line of Clark County, thence south on said range line to the township line between townships seventeen (17) and eighteen (18) south, thence east on said township line to the range line between ranges sixty-four (64) and sixty-five (65) east, thence south on said range line to the fifth standard parallel south, and thence east on said fifth standard parallel south to the Colorado River.

District No. 2 shall include all the balance of the territory embraced in said Clark County.

Board for district No. 1.

SEC. 2. The control and government of all high and elementary schools in said district No. 1 shall be vested in a board of education composed of five trustees, to be selected from the school trustees of the various elementary schools now existing in said educational districts as hereinafter provided.

Board, how selected.

SEC. 3. The members of the boards of school trustees as at present constituted within said educational district shall meet at Overton, in said county, on or before the first day of May, 1919, and from their numbers they shall select five persons who shall constitute the board of education of said educational district until the next general election. Three of said board shall be selected from the boards of trustees of schools of the Moapa Valley and two from the boards of trustees of schools of the Virgin Valley of said educational district.

Board elected, when.

SEC. 4. At the general election in 1920, two members of said board shall be elected for a term of four years and three members of said board for a term of two years. At each general election thereafter, two members of said board shall be elected for a term of four years and one member of said board shall be elected for a term of two years.

Powers of board.

SEC. 5. The said board of education of said educational district No. 1 shall have control of the fiscal policy of the high and elementary schools in said district; it shall embrace uniform courses of study as provided or adopted by the state board of education or other lawful authority; it shall employ all teachers, hire janitors and other employees and discharge the same when sufficient cause therefor exists; and they shall do any and all things necessary for the proper conduct, maintenance and administration of said schools.

Quorum.

SEC. 6. Three members of said board shall constitute a quorum for the transaction of business.

Schools not discontinued.

SEC. 7. No elementary school within said district now established shall be discontinued without the consent of a majority of the parents and guardians of the pupils attending such school.

Stats. 1913, 240, authorizing Elko County to issue bonds for, and to construct and equip, a high-school building in the town of Wells, was not repealed or amended by this act. Dotta v. Hesson, 38 Nev. 1-4 (143 P. 305).

PUBLIC SUPPLIES

3479. Repealed, Stats. 1913, 24.

3480. Repealed, Stats. 1913, 24.

PUBLIC WORK

An Act to prohibit the employment of any person except a native-born or naturalized citizen of the United States by any officer of the State of Nevada, or of any political subdivision of the state, or by any person acting under or for such officer, or by any contractor with the State of Nevada, or with any political subdivision of the state, in the construction of public works, or in any office or department of the state or in any office or department of any political subdivision of the state; providing penalties for violations of this act, and other matters relating thereto.

Approved March 28, 1919, 296

None but citizens or prospective citizens to be employed.

SECTION 1. No person not a citizen or ward of the United States or who has not declared his intentions to become a citizen shall be employed by any officer of the State of Nevada, or by any contractor with the State of Nevada, or any political subdivision of the state, or by any person acting under or for such officer or contractor, in the construction of public works or in any office or department of the State of Nevada, or political subdivision of the state, and in all cases where persons are so employed, preference shall be given to honorably discharged soldiers, sailors and marines, and to citizens of the State of Nevada; *provided*, nothing in this act shall be construed to prevent the working of prisoners by the State of Nevada, or by any political subdivision of the state, on street or road work or other public work; nor to prevent the working of aliens, who have not forfeited their right to citizenship by claiming exemption from military service, as common laborers in the construction of public roads, when it can be shown that citizens or wards of the United States, or persons who have declared their intentions to become citizens, are not available for such employment; nor to prevent the exchange of instructors between the University of Nevada and similar institutions of North and South American countries.

Contracts to contain such proviso.

SEC. 2. In each contract for the construction of public works a proviso shall be inserted to the effect that if the provisions of section 1 of this act are not complied with by the contractor, the contract shall be void. All boards, commissioners, officers, agents, and employees having the power to enter into contracts for the expenditure of public money on public works shall file in the office of the commissioner of labor the names and addresses of all contractors holding contracts with the State of Nevada, or with any political subdivision of the state. Upon the letting of new contracts the names and addresses of such new contractors shall likewise be filed. Upon the demand of the commissioner of labor a contractor shall furnish a list of the names and addresses of all subcontractors in his employ.

No money paid from public treasuries.

SEC. 3. No money shall be paid out of the state treasury, or out of the treasury of any political subdivision of the state, to any person employed on any of the work mentioned in section 1 of this act unless such person shall be a citizen or ward, or naturalized citizen of the United States, subject to the exception contained in section 1 of this act.

Penalty for violation.

SEC. 4. Any officer of the State of Nevada, or of any political subdivision of the state, or any person acting under or for such officer, or any

contractor with the State of Nevada, or with any political subdivision of the state, or any other person who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof be fined in a sum of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, or be imprisoned not exceeding six months, or by both such fine and imprisonment; *provided, however*, the penalties provided for in this act shall not apply where violations thereof are due to misrepresentations made by the employee or employees.

An Act to limit the hours of labor of persons employed by the state, county and municipal governments, and of persons employed by contractors, subcontractors or other persons in the performance of a public work; requiring a condition limiting the hours of labor in all contracts for public work; fixing penalties for the violations of this act, and other matters properly relating thereto.

Approved March 29, 1919, 370

Eight-hour day for all employees on public works.

SECTION 1. The services and employment of all persons, except as otherwise provided herein, who are now, or may hereafter be, employed by the State of Nevada, or by any county, city, town, township, or any other political subdivision thereof, or by any contractor, subcontractor or other person having a contract with the State of Nevada, or with any county, city, town, township, or any other political subdivision thereof, for the performance of public work, is hereby limited and restricted to not more than eight hours in any one calendar day and not more than fifty-six hours in any one week; and it shall be unlawful for any officer or agent of the State of Nevada, or of any county, city, town, township, or other political subdivision thereof, or any contractor, subcontractor or other person having a contract as herein provided, whose duty it shall be to employ, direct or control the services of such employees, to require or permit such employees to work more than eight hours in any one calendar day or more than fifty-six hours in any one week, except in cases of emergency where life or property is in imminent danger; *provided*, nothing in this act shall apply to officials of the State of Nevada, or of any county, city, town, township, or other political subdivision thereof, or to employees thereof who are engaged as employees of a fire department, or to nurses in training or working in hospitals, or to deputy sheriffs or jailers.

All contracts must comply.

SEC. 2. Every contract made with the State of Nevada or with any county, city, town, township, or any other political subdivision thereof, shall contain a condition that no person shall be employed for more than eight hours in any one day or more than fifty-six hours in any one week, except in cases of emergency where life or property is in imminent danger, and in such emergency cases the person required to work over eight hours per day or fifty-six hours per week shall be paid regular wages for all overtime; every such contract herein referred to shall also contain a condition that the contract may be canceled at the election of the State of Nevada or of any county, city, town, township, or other political subdivision thereof, which is concerned, for any failure or refusal on the part of the contractor to faithfully perform the contract according to its terms as herein provided.

Penalty for violation.

SEC. 3. Any officer or agent of the State of Nevada, or of any county, city, town, township, or other political subdivision thereof, or any contractor, subcontractor or other person, whose duty it shall be to employ,

direct or control the services of an employee covered by this act, who shall violate any of the provisions of this act as to the hours of employment of labor as herein provided, shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine not to exceed three hundred (\$300) dollars, or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

PURE FOOD

3436-3510. Repealed by implication by following act (Stats. 1913, 316):

An Act preventing the manufacture, sale or transportation of adulterated, mislabeled or misbranded, or poisonous or deleterious foods, drugs, medicines and liquors, and for regulating the manufacture and traffic therein, and providing penalties for the violation thereof, and repealing all acts in conflict therewith.

Approved March 25, 1913, 316

Adulterated food, drugs, medicines, and liquors prohibited.

SECTION 1. The manufacture, production, preparation, compounding, packing, selling, offering for sale, or keeping for sale within the State of Nevada, or the introduction into this state from any other state, territory, or the District of Columbia, or from any foreign country, of any article of food, drug or liquor which is adulterated, mislabeled, or misbranded within the meaning of this act is hereby prohibited. Any person, firm, company, society or corporation who shall import or receive from any other state or territory, or the District of Columbia, or from any foreign country, or who, having so received, shall deliver for pay or otherwise, or offer to deliver to any other person any article of food, drug, or liquor adulterated, mislabeled or misbranded within the meaning of this act, or any person who shall manufacture or produce, prepare or compound, or pack or sell or offer for sale, or keep for sale in the State of Nevada any such adulterated, mislabeled or misbranded food, drug or liquor shall be guilty of misdemeanor; *provided*, that no article of food shall be deemed adulterated, mislabeled or misbranded within the provisions of this act, when prepared for export beyond the jurisdiction of the United States and prepared or packed according to specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if such foods shall be in fact sold, or kept or offered for sale for domestic uses and consumption, then this proviso shall not exempt said article from the operation of any provision of this act.

"Food" defined.

SEC. 2. The term "food," as used in this act, shall include all articles used for food, drink, liquor, confectionery, or condiment by man or other animals, whether simple, mixed or compound.

Standard defined.

SEC. 3. The standard of purity of foods, drugs, and liquors shall be that proclaimed by the secretary of the United States department of agriculture, and the regulations and definitions adopted for the enforcement of

the national food and drugs act of June 30, 1906, shall be adopted by the Nevada agricultural experiment station for the enforcement of this act.

What constitutes adulteration.

SEC. 4. Food shall be deemed adulterated within the meaning of this act, in any of the following cases:

First—If any substance has been mixed or packed, or mixed and packed with the food so as to reduce or lower or injuriously affect its quality, purity, strength, or food value.

Second—If any substance has been substituted wholly or in part for the article of food.

Third—If any essential or any valuable constituent or ingredient of any article of food has been wholly or in part abstracted.

Fourth—If it be mixed, colored, powdered, coated, or stained in any manner whereby damage or inferiority is concealed.

Fifth—If it contain any added poisonous, or other added deleterious ingredient.

Sixth—If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food, whether manufactured or not, or if it consists in whole or in part or is the product of a diseased animal, or one that has died otherwise than by slaughter; *provided*, that an article of liquor shall not be deemed adulterated, mislabeled or misbranded, if it be blended or mixed with like substances so as not to injuriously reduce or injuriously lower or injuriously affect its quality, purity, or strength.

Seventh—If, in the manufacture, sale, distribution or transportation, it is not at all times securely protected from filth, flies, dust or other contamination or other unclean, unhealthy or insanitary conditions.

Eighth—In the case of confectionery: If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredients deleterious or detrimental to health, or vinous, malt, or spirituous liquor, or compound or narcotic drug.

"Drug" defined.

SEC. 5. That the term "drug," as used in this act, shall include all medicines and preparations recognized in the United States pharmacopœia or national formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals.

U. S. standard required.

SEC. 6. The standard of purity of drugs shall be the United States pharmacopœia and national formulary official at the time of investigation.

What constitutes adulteration of drugs.

SEC. 7. Drugs shall be deemed adulterated within the meaning of this act in any of the following cases:

First—If, when a drug is sold under or by a name recognized in the United States pharmacopœia or national formulary, it differs from the standard of strength or purity as determined by the tests laid down in the United States pharmacopœia or national formulary official at the time of the investigation; *provided*, that no drug defined in the United States pharmacopœia or national formulary shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the package thereof, although the standard may differ from that determined by the tests laid down in the United States pharmacopœia or national formulary.

Second—If the strength or purity fall below the professed standard of purity under which it is sold.

“Misbranded” defined.

SEC. 8. That the term “misbranded,” as used herein, shall apply to all liquors, drugs, or articles of food, or articles which enter into the composition of foods, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food product, liquor or drug which is falsely branded as to the county, city, or country, town, state, territory, District of Columbia, or foreign country in which it is manufactured or produced.

Mislabeled or misbranded, when.

SEC. 9. Food, liquor and drugs shall be deemed mislabeled or misbranded within the meaning of this act in any of the following cases:

First—If it be an imitation of or offered for sale under the distinctive name of another article of food, liquor or drugs.

Second—If it be labeled or colored or branded so as to deceive, mislead or tend to deceive or mislead the purchaser, or if it be falsely labeled in any respect, or if it purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package.

Third—If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth—If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular.

Fifth—When any package bears the name of the manufacturers, jobbers or sellers, or the grade or class of the product, it must bear the name of the real manufacturers, jobbers or sellers and the true grade or class of the product, the same to be expressed in clear and distinct English words in legible type; *provided*, that an article of food shall not be deemed misbranded, if it be a well-known food product of a nature, quality and appearance, and so exposed to public inspection as not to deceive or mislead nor tend to deceive or mislead a purchaser, and not misbranded and not of the character included within the definitions one and four of this section.

Sixth—In the case of drugs: If its package or label shall bear any statement, design, or device regarding the curative or therapeutic effects of such article which is false or fraudulent.

“Package” defined.

SEC. 10. The term “package,” as used in this act, shall be construed to include any phial, bottle, jar, demijohn, carton, bag, case, can, box, or barrel, or any receptacle, vessel or container of whatsoever material or nature which can be used by a manufacturer, producer, jobber, packer or dealer, for enclosing any article of food.

Possession of, prima facie evidence.

SEC. 11. The possession of any adulterated, mislabeled or misbranded article of food, liquor or drug by any manufacturer, producer, jobber, packer or dealer in food, liquor or drugs, or by any broker, commission merchant, agent, employee, or servant of any such manufacturer; producer, jobber, packer, or dealer, shall be prima facie evidence of the violation of this act.

Board of control to appoint commissioner.

SEC. 12. The board of control of the Nevada agricultural experiment station shall designate and appoint for the enforcement of this act a commissioner and such other agent or agents as it may deem necessary, and the sheriffs of the respective counties of the state are hereby appointed and constituted agents for the enforcement of this act.

Experiment station to analyze samples.

SEC. 13. The Nevada agricultural experiment station shall make examination and analysis of food products, liquors and drugs, on sale in Nevada, suspected of being adulterated, mislabeled or misbranded, at such times and places and to such extent as the said commissioner, with the approval of the board of control, may determine, and the said commissioner shall make uniform rules and regulations for the carrying out of the provisions of this act, and such commissioner, agent or agents and sheriffs shall have free access at all reasonable hours for the purpose of examining into any place wherein it is suspected any article of food, drug, or liquor adulterated with any deleterious or foreign ingredient or ingredients exists, and such commissioners, agents or sheriffs, upon tendering the market price of said article, if a sale be refused, may take from any person, firm, or corporation samples of any articles suspected of being adulterated as aforesaid, and the board of control of the said experiment station may adopt and affix standards of purity, quality or strength when such standards are not specified or fixed by statute.

Commissioner to make sanitary regulations.

SEC. 14. The said commissioner, with the approval of the board of control of the said experiment station, shall make uniform rules and regulations for the sanitary inspection of any place where food, drugs, or liquors are prepared, sold, or offered for sale. If, in the opinion of said commissioner, or other agent of said experiment station, after an investigation of any place where foods, drugs, or liquors are prepared, sold or offered for sale, the same is operated in an unclean or insanitary manner, the commissioner or other agent shall notify in writing the person operating such place, to put the same in a clean and sanitary condition within a reasonable time, to be stated in said notice. Any authorized agent shall have the power, when inspecting any place where foods, drugs or liquors are prepared, sold or offered for sale, to order the use of any bottle, can or other utensil which is in an unclean or insanitary condition discontinued, until such can, bottle, or other utensil is thoroughly cleaned and put in sanitary condition. Any person or persons failing to comply with the order of the commissioner or other authorized agent, shall be guilty of a misdemeanor and subject to the penalties as provided for in this act.

Samples, how obtained and transmitted.

SEC. 15. When an agent or sheriff shall obtain by purchase or otherwise a sample of suspected adulterated, mislabeled or misbranded food, drug or liquor, the said sample shall be sealed by the agent or sheriff with a seal provided for that purpose and shall be sent or taken to the Nevada agricultural experiment station for examination and analysis; but if the person from whom such sample was taken shall request him to do so, he shall at the same time and in the presence of the person from whom the same is taken, seal with the proper seals two samples of the articles taken. One sample shall be delivered to the party from whom procured and the other sample shall be sent or taken to the Nevada agricultural experiment station for examination and analysis. The analyst making the examination and analysis shall report to the said commissioners a certificate of findings,

and such certificate shall be admitted in evidence in all courts of this state and shall be prima facie evidence of the truths of the facts contained therein.

Sheriff to act.

SEC. 16. It is hereby made the duty of the sheriff of any county of this state, on presentation to him of a verified complaint of the violation of any provisions of this act, at once to obtain a sample of the suspected adulterated, mislabeled or misbranded food, liquor or drug complained of, in such manner, and dispose of the same as prescribed in section 15 of this act.

Fees of sheriff county charge.

SEC. 17. For his services hereunder the said sheriff shall be allowed the same fees for travel allowed by law to sheriffs on service of criminal process, together with such other compensation as by the board of county commissioners of his county may be deemed reasonable, and all amounts expended by him in procuring and transmitting the said samples, which fees and amounts expended shall be audited and allowed by the said commissioners and paid by his said county as other bills of said sheriff.

Certain acts misdemeanor.

SEC. 18. It shall be a misdemeanor for any person to refuse to sell to any sheriff or other agent of the Nevada agricultural experiment station, any sample of food, liquor or drug upon tender of the market price, or to conceal any such food, liquor or drug from such officer, or to withhold from him information where such food, liquor or drug is kept or stored. Any such person so refusing to sell, or concealing such food, liquor or drug, or withholding such information from said officer shall be deemed guilty of a misdemeanor and shall upon conviction thereof be punished by a fine not exceeding five hundred dollars or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

Procedure when adulterated or unfit.

SEC. 19. When it shall appear from any such examination or analysis made by an analyst of the Nevada agricultural experiment station that such sample of food, liquor or drug is adulterated, mislabeled or misbranded within the meaning of this act, the said commissioner shall furnish a notice of the fact, together with a copy of the certificate of findings, by registered mail, to the party or parties from whom the sample was obtained or who executed the guarantee as provided for in this act, and a date, hour and place shall be fixed by said commissioner at which said party or parties may be heard before him, under such rules and regulations as may be prescribed by said commissioner. The receipts of the postoffice department for such registered notice shall be received as prima facie evidence that such notice has been given. Parties interested therein may appear in person or by attorney and may propound interrogatives and submit oral or written evidence to show any fault or error in the findings of the analyst or examiner. If the examination or analysis be found correct or if the party or parties fail to appear at such hearing after notice duly served, as provided herein, the commissioner shall forthwith transmit a certificate of the facts so found to the district attorney of the county in which said adulterated, misbranded or mislabeled food, liquor or drug was found. No publication as in this act provided shall be made until after said hearing is concluded.

Dealer not prosecuted, when.

SEC. 20. That no dealer shall be prosecuted under the provisions of this act when he can establish a guarantee signed by the wholesale jobber,

manufacturer or other party from whom he purchased such article, to the effect that the same is not adulterated, mislabeled or misbranded within the meaning of this act, designating it. Said guarantee, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealers, and in such cases, the party or parties shall be amenable to the prosecution, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this act.

Commission to report to district attorney.

SEC. 21. It shall be the duty of said commissioner, whenever he has satisfactory evidence of the violation of any of the provisions of this act, respecting the adulteration, mislabeling or misbranding of foods, liquors or drugs, to report such facts to the district attorney of the county where the law is violated.

District attorney to prosecute.

SEC. 22. It shall be the duty of the district attorney to prosecute all violations of the provisions of this act occurring within his county and which shall be reported to him under the provisions of this act.

Record kept by commissioner.

SEC. 23. Said commissioner shall keep a record of adulterated, mislabeled or misbranded foods, liquors or drugs, in which record shall be included a list of cases examined by said experiment station in which violations were found, and a list of the articles found adulterated, mislabeled or misbranded and the names of the manufacturers, producers, jobbers and sellers. Said record, or any parts thereof, may, in the discretion of the commissioner, be included in the annual report which the said commissioner is hereby authorized to make to the governor. The said commissioner may, in his discretion, publish any part of said record in the bulletins, circulars and reports which he may publish from time to time.

Cooperation with U. S. government.

SEC. 24. The governor of the state, with the Nevada agricultural experiment station, shall cooperate with the government of the United States for carrying out the purposes of this act, and the said experiment station may appoint in writing, any inspector or employee of the United States department of agriculture as state pure food agent in carrying out the provisions of this act, when in their judgment it may be proper or necessary, who shall have and may exercise the powers of state agents. But no inspectors and employees of the United States department of agriculture shall be paid for their services by the State of Nevada, or any county in this state.

Penalties for violation.

SEC. 25. Any person, firm, company, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Foods found to be adulterated, mislabeled or misbranded within the meaning of this act, may, by order of any court or judge, be seized and destroyed.

Principal responsible.

SEC. 26. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, company, society or association within the

scope of his employment or office, shall in every case be also deemed to be the act, omission or failure of such corporation, company, society or association as well as that of the person.

An Act regulating the sale or exchange, for human consumption, of butter and ice-cream; defining the same as "wholesome" or "impure"; making it unlawful to sell or exchange, or offer for sale or exchange, impure butter or ice-cream, and providing penalty therefor; providing for the inspection and determination of butter and ice-cream as "wholesome" or "impure" by the department of food and drug control, and for other purposes.

Approved March 23, 1917, 272

Definition of certain terms.

SECTION 1. For the purposes of this act butter and ice-cream shall be classified as "wholesome" or "impure." Wholesome butter or ice-cream is hereby defined to be butter or ice-cream made from cream and milk wherein the entire procedure from dairy to creamery, or other place of manufacture, of such product or products, is conducted under sanitary conditions; and wherein the milk or cream has either been produced by cows all of which have been duly certified by some reputable veterinarian as free from tuberculosis, or, if not so certified, wherein such milk or cream has been pasteurized as hereinafter prescribed. "Impure" butter or ice-cream is hereby defined to be all butter or ice-cream other than that which is "wholesome" as above defined. "Pasteurized" milk or cream, within the meaning of this act, shall be construed to be milk or cream which has been pasteurized by the holding process at a temperature of not less than 140 degrees Fahrenheit for 25 minutes, or the continuous flash process at a continuous temperature of not less than 170 degrees Fahrenheit, and which has not thereafter been exposed to recontamination. Pasteurizing plants shall be equipped with a self-registering device for record of the time and temperature of pasteurizing. Such record shall be kept for two months and be available for inspection by any health officer or person charged with the enforcement of this act.

Impure butter or ice-cream prohibited.

SEC. 2. It shall be unlawful for any person, firm or corporation to sell or exchange, or offer or expose for sale or exchange for human consumption, any impure butter or ice-cream. Imported butter from states having similar laws, if made by creameries, dairies or farms recognized by the authorities of such states as manufacturing wholesome butter, and imported pasteurized butter from states not having similar laws, but the makers of which shall have satisfied the department of food and drug control that such butter conforms to the requirements of this act, shall be regarded as wholesome if offered for sale or exchange in this state. All other imported butter shall be deemed impure. Any person, firm or corporation violating the provisions of this section shall be deemed guilty, for the first offense, of a misdemeanor, and for any subsequent offense, of a gross misdemeanor, and upon conviction shall be punished as now provided by law for such offenses. From and after the date on which this section goes into effect all impure butter and ice-cream offered for sale or exchange, for human consumption, shall be subject to confiscation by the police authorities and destroyed.

Inspection under food and drug division.

SEC. 3. The inspection of butter and ice-cream under the provisions of this act, and the determination of the same as wholesome or impure, are

hereby made duties of the department of food and drug control, public service division, University of Nevada, and which said department is hereby given all necessary authority and power for such inspection and determination and may employ such inspectors or agents therefor as may be needful within any appropriation for such purposes provided. On complaint by such department of the violation of section two of this act by any person, firm or corporation it shall be the duty of the district attorney of the county in which such violation is alleged to have occurred to institute criminal proceedings against the party or parties complained of and to prosecute the same in the proper courts.

Who to enforce regulations.

SEC. 4. Such department of food and drug control is hereby authorized and empowered to make and enforce such reasonable rules and regulations, within the meaning and purposes of this act, as may be needful in its administration, and which may include the sanitary production, care and handling of milk and cream used in the making of butter or ice-cream; *provided*, that such last-mentioned rules and regulations shall first be approved by the director of the agricultural extension division, University of Nevada. Said department, prior to June 1 next after passage of this act, shall supply local dealers in butter and ice-cream with a list, classified as makers of wholesome or impure butter or ice-cream, of persons, firms and creameries commonly supplying butter and ice-cream for local consumption, and from time to time thereafter shall supply such dealers with additions to, or alterations in, such classifications.

Small dealers exempt.

SEC. 5. The provisions of this act shall not apply where the butter or ice-cream is retailed by the maker in quantities not exceeding two hundred and fifty pounds per month.

An Act making it unlawful to sell or offer for sale any cream which shall contain less than a specified percentage of butter-fat, and providing penalties for the violation of this act.

Approved March 23, 1917, 291

Amount of butter-fat.

SECTION 1. It shall be unlawful for any person to sell or offer for sale within this state any cream for domestic purposes and by liquid measure which shall contain less than twenty-two per cent of butter-fat.

Penalty for violation.

SEC. 2. Any person violating the provisions of section one of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not to exceed one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

RAILROADS

3511. Formation of corporations—Number of directors.

SECTION 1. Any number of persons, not less than five, either in this state or the United States, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, and maintaining such railroad, by complying with the following requirements: Whenever stock to the amount of at least one thousand dollars for each and every mile of the proposed railroad shall have been so subscribed, and ten per cent in cash of the amount so required to be subscribed shall be actually and in good faith paid to a treasurer, to be named and appointed by said subscribers from among their number, then the said subscribers, either in person, or by written proxy, after having received at least five days' notice from said treasurer of a meeting of said subscribers for that purpose, may adopt articles of association, and may elect from among the subscribers to said articles, not less than five nor more than thirteen directors. *As amended, Stats. 1917, 421.*

3520. Railroad's contract for construction of fences along right of way, entered into by vice-president, was valid, though contract was unauthorized by board of directors, the vice-president, as managing agent of railroad, having apparent authority to bind railroad, notwithstanding this section providing for management of railroad by board of directors. *Bradley v. Nevada-California-Oregon Ry., 42 Nev. 411, 416 (178 P. 907).*

Corporation may extend existence, how.

SEC. 17½. (a) That any railroad corporation, organized and existing under any of the laws of this state governing such corporation, may at any time before the expiration of the time limited for its existence, extend the term of its existence beyond the time specified in its original articles of incorporation, for any period of time, or perpetually; together with all its rights, privileges, and immunities, and subject to all its existing debts, obligations and liabilities and duties imposed by its existing charter, or amendments thereto, or by the law under which it was organized, or acts amendatory thereof, or supplemental thereto, or by any law of this state applicable to such corporation by filing a certificate of such extension with the secretary of state, duly sworn or affirmed to by the president and secretary of such corporation before any person authorized by the laws of this state to administer oaths or affirmations, or before any notary public; which certificate must be authorized by two-thirds in interest of the stock in writing, or by a resolution to that effect passed at any regular meeting or special meeting of the stockholders called for that purpose, voting either in person or by proxy, such meeting to be called as provided by law, or the by-laws of such corporation; such certificate shall set forth:

1. The name of the corporation, which shall be the existing name of such corporation at the time of such extension.

2. The name of the city, town or place within the county in which its principal office or place of business is located in this state.

3. The date when such extension is to commence, which date shall be prior to the date of the expiration of the charter desired to be extended, and whether or not such extension is to be perpetual, and if not perpetual the time when such extension is to continue.

4. That the corporation desiring to extend and so continue its charter, is duly organized and carrying on the business authorized by its existing charter and amendments thereto, if any, and desires to extend and continue its existence pursuant to and subject to the provisions of the act under

which it was incorporated, and acts amendatory thereof, supplemental thereto, or applicable to such corporation.

(b) Such certificate for the extension of the existence of any such corporation shall be filed in the office of the secretary of state, and he shall furnish a certified copy of same under his hand and seal of office; such certified copy shall be filed in the office of the clerk of the county in which the principal office of such corporation is located in this state, and recorded in a book kept for that purpose, or in a book provided for recording original articles of incorporation; and such certificate or a certified copy thereof duly certified under the hand of the secretary of state and his seal of office, accompanied with the certificate of the clerk of the county wherein the same is recorded, under his hand and seal of office, stating that it has been recorded, the record of the same in the office of the clerk aforesaid, or a copy of such record duly certified, or a copy of such record duly certified by the clerk aforesaid, shall be received as evidence in all courts of law and equity in this state.

(c) For filing such a certificate of extension in the office of the secretary of state and county clerk there shall be paid to the secretary of state, for the use of the state, five cents for each one thousand dollars of capital authorized, as set forth in the original articles of incorporation; and to the county clerk for filing and recording such certificate, the sum of five dollars.

(d) Any such corporation now existing or hereafter incorporated, desiring to extend its corporate existence, shall, upon complying with the provisions of subdivisions a, b, and c of this section, be and continue a corporation for the time stated in its certificate of extension, and shall, in addition to the rights, privileges and immunities conferred by its original charter, possess and enjoy all the benefits of the laws of this state which are applicable to the nature of its business, and shall be subject to the restrictions, liabilities and obligations applicable thereto.

(e) It shall be the duty of all corporations enjoying the benefit of this act and all other acts chartering or franchising any corporation affected with a public use, to render an efficient and adequate service to the public, carry out all the provisions of its charter or franchise, promptly construct its system or plant or additions thereto in compliance with law, and to reconstruct or rebuild the same in whole or in part whenever necessary in order to render a safe, efficient and adequate service to the public. *Added, Stats. 1917, 85.*

3553. Cited, *Zetler v. Tonopah and Goldfield R. R.*, 35 Nev. 390 (129 P. 299).

3555. Repealed, Stats. 1917, 84.

3558. Cited, *Zetler v. Tonopah and Goldfield R. R.*, 35 Nev. 390 (129 P. 299).

3559. Cited, *Zetler v. Tonopah and Goldfield R. R.*, 35 Nev. 390 (129 P. 299).

3558. Cited, *Dixon v. Southern Pacific Company*, 42 Nev. 79 (172 P. 369).

3559. Cited, *Dixon v. Southern Pacific Company*, 42 Nev. 79 (172 P. 369).

3588-3596. Repealed, Stats. 1913, 64, and the following act (Stats. 1913, 62) substituted:

An Act to promote the public safety by requiring common-carrier railroads to provide adequate train crews, and defining such crews, and prescribing a penalty for the violation of the provisions thereof.

Approved March 12, 1913, 62.

Full train crew required—Crew of 4, when.

SECTION 1. It shall be unlawful for any person, firm, company or corporation engaged in the business of common carrier, operating freight and

passenger trains, or either of them, within or through the State of Nevada, to run or operate, or permit or cause to be run or operated, within or through this state, along or over its road or tracks, other than along or over the road or tracks within yard limits, any freight or passenger train consisting of two cars or less, exclusive of caboose and engine and tenders, with less than a full crew consisting of not less than four persons, to wit, one engineer, one fireman, one conductor and one brakeman, who will act in the capacity of flagman.

Crew of 5, when.

SEC. 2. It shall be unlawful for any person, firm, company, or corporation engaged in the business of common carrier, operating freight and passenger trains, or either of them, within or through the State of Nevada, to run or operate, or permit or cause to be run or operated, within or through this state, along or over its road or tracks, other than along or over the road or tracks within yard limits, any freight or passenger train of three or more and less than fifty freight, passenger, or other cars exclusive of caboose and engine with less than a full crew consisting of five persons, to wit, one engineer, one fireman, one conductor, one brakeman and one flagman.

Crew of 6, when.

SEC. 3. It shall be unlawful for any person, firm, company, or corporation, engaged in the business of common carrier, operating freight and passenger trains, or either of them, within or through the State of Nevada, to run or operate, or permit or cause to be run or operated, within or through this state, along or over its road or tracks other than along or over its road or tracks within yard limits, any freight or passenger train of more than fifty freight, passenger or other cars, exclusive of caboose and engine and tender, with less than a full crew, consisting of not less than six persons, to wit, one conductor, one engineer, one fireman, two brakemen and one flagman.

Flagman, qualifications of.

SEC. 4. The flagman mentioned in sections 1, 2, and 3 of this act shall have had at least one year's actual experience in train service.

Certain railroads excepted.

SEC. 5. The provisions of this act shall not apply to or include any railroad company, or receiver, or manager thereof, of any line of railroad in this state less than 95 miles in length, nor of any line of railroad in this state on which but one train a day is operated each way; neither shall they apply to the operation of light engines and tenders when running as such outside the yards limits. *As amended, Stats. 1915, 107.*

Not to repeal or affect certain act.

SEC. 6. Nothing in this act shall be considered to repeal or affect in whole or in part that certain act entitled "An act to regulate railroads, telegraph, and telephone companies and other common carriers of this state, creating a railroad commission, constituting the governor, the lieutenant-governor and the attorney-general a railroad board for the appointment and removal of the railroad commissioners, preventing the imposition of unreasonable rates, preventing unjust discrimination, insuring an adequate railway service, and fixing maximum freight charges," approved March 5, 1907.

Penalties for violation.

SEC. 7. Any railroad company or receiver of any railroad company, and

any person, firm, company or corporation engaged in the business of common carriers doing business in the State of Nevada, who or which shall violate any of the provisions of this act, shall be liable to the State of Nevada for a penalty of five hundred dollars for each offense; and such penalty shall be recovered and suit brought in the name of the State of Nevada in a court of proper jurisdiction in any county in or through which such line of railroad may run, by the attorney-general or, under his direction, by the district attorney of any county through which such line of railroad may operate.

Certain rights not affected.

SEC. 8. The repeal of a law by this act shall not affect any act done, or any right established, or the prosecution of a criminal action or proceeding commenced, or an offense committed, or the prosecution of any action for the violation of any of the sections of that certain act entitled "An act to promote the public safety by requiring common-carrier railroads to provide adequate train crews and defining such crews, and prescribing a penalty for the violation of the provisions thereof," approved March 8, 1909, or that certain act entitled "An act to promote the public safety by requiring railroad companies to provide adequate train crews, and defining such crews, and prescribing a penalty for the violation of the provisions thereof," approved February 21, 1911, before the repeal takes effect; nor shall anything in the repeal of said laws or any part thereof be construed to be, or act as, a legislative pardon for any violation of said acts, but any proceedings in such cases after this act takes effect shall proceed as if no repeal thereof was made, and shall so far as practicable conform to the provisions of this act.

Certain laws repealed.

SEC. 9. Those certain acts entitled "An act to promote the public safety by requiring common-carrier railroads to provide adequate train crews and defining such crews and prescribing a penalty for the violation of the provisions thereof," approved March 8, 1909, and that certain act entitled "An act to promote the public safety by requiring railroad companies to provide adequate train crews, and defining such crews, and prescribing a penalty for the violation of the provisions thereof," approved February 21, 1911, and that certain act entitled "An act to amend an act entitled 'An act to promote the public safety by requiring railroad companies to provide adequate train crews, and defining such crews and prescribing a penalty for the violation of the provisions thereof,' approved February 21, 1911," approved March 28, 1911, and all other acts and parts of acts in conflict with the provisions of this act are hereby repealed; *provided*, that this repeal of the acts named, and of other acts in conflict with the provisions of this act shall not be so construed as to relieve any common carrier from the liability and penalties prescribed by the provisions of any act in force at the time of the approval of this act; and that all violations of any of the laws named or referred to may be prosecuted according to law the same as if they were still in full force and effect.

An Act to promote the public safety by requiring common-carrier railroads to provide and equip all locomotives in road service with headlights, of lighting capacity of 1,500-candle power, and prescribing penalty for the violation of the provisions thereof.

Approved February 28, 1913, 26

Certain headlights required—Exceptions.

SECTION 1. Every company, corporational lessee, manager, or receiver,

owning or operating a railroad in this state, is hereby required to equip, maintain, use, and display at night upon each and every locomotive being operated in road service in this state, an electric or other headlight of at least 1,500-candle power, measured without the aid of a reflector; *provided*, that any electric headlight, which will pick up and distinguish an object the size of a man dressed in dark clothes upon a dark, clear night at a distance of 1,000 feet, shall be deemed the equivalent of a 1,500-candle-power headlight measured without the aid of a reflector; *provided, further*, that this act shall not apply to locomotive engines regularly used in switching cars or trains; *and provided further*, that this act shall not apply to railroads not maintaining regular night-train schedules nor to locomotives going to or returning from repair shops when ordered in for repairs. *As amended, Stats. 1915, 148.*

SEC. 2. Repealed, Stats. 1915, 148.

Penalties for noncompliance.

SEC. 3. Any railroad company, or the receiver, or lessee thereof, doing business in the State of Nevada, which shall violate the provisions of this act shall be liable to the State of Nevada for the penalty of not less than one hundred (\$100) dollars nor more than one thousand (\$1,000) dollars for each offense. And such penalties shall be recovered and suit brought, in the name of the State of Nevada, in any court of competent jurisdiction, in any county in or through which such line of railroad may run, by the attorney-general or by the district attorney in any county in or through which such line of railroad may be operated.

An Act to promote the safety of employees and passengers upon railroads by limiting the hours of service of employees thereon and defining the duties of the district attorney and the state railroad commission in regard thereto.

Approved March 31, 1913, 491

Limiting day's work—Terms defined.

SECTION 1. The provisions of this act shall apply to any common carrier or carriers, their officers, agents and employees, engaged in the transportation of passengers or property by railroad in the State of Nevada. The term "railroad," as used in this act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract agreement or lease, and the term "employees," as used in this act, shall be held to mean persons actually engaged in or connected with the movement of any train.

Limit of work.

SEC. 2. It shall be unlawful for any common carrier, its officers, or agents, subject to this act, to require or permit any employee subject to this act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty; *provided*, that no employee who by the use of the telegraph or telephone or other electrical device, dispatches, reports, transmits, receives or delivers, orders or who from towers, offices, places and stations operates signals or switches or similar mechanical devices controlling, pertaining to, or affecting the movement

of trains of more than two cars shall be required or permitted to be or remain on duty in any twenty-four-hour period for a longer period than eight hours, which period of eight hours shall be wholly within the limits of a continuous shift and upon the completion of which period such employee shall not be required or permitted to again go on duty until the expiration of sixteen hours. This proviso shall not apply to employees who in case of emergency use the telephone to obtain orders or information governing the movement of trains; *provided further*, in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period of not exceeding three days in any week.

Penalties for violation.

SEC. 3. That any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be or remain on duty in violation of the second section hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred and fifty dollars (\$250) and not more than five hundred dollars (\$500) for each and every violation of this act, in a suit or suits to be brought by the district attorney in the district courts of the State of Nevada having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorneys to bring such suits upon satisfactory information being filed with him; but no such suit shall be brought after the expiration of one year from the date of such violation; and it shall also be the duty of the state railroad commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge. In all prosecutions under this act the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents; *provided*, that the provisions of this act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officers or agent in charge of such employee at the time said employee left terminal and which could not have been foreseen; *provided further*, that the provisions of this act shall not apply to the crews of wrecking or relief trains; *provided further*, that the provisions of this act shall not apply to railroads not maintaining a regular night-train schedule.

Railroad commission to enforce.

SEC. 4. It shall be the duty of the state railroad commission to execute and enforce the provisions of this act, and all powers granted by law to the state railroad commission are hereby extended to it in the execution of this act.

3600-1. Repealed, Stats. 1913, 297, and following act (Stats. 1913, 296) substituted:

An Act requiring the giving of notice of live stock killed or injured by locomotives or cars, and providing a penalty for failure to give notice of live stock so killed or injured, and repealing an act entitled "An act requiring railways to give public notice of live stock killed or injured by their locomotives or cars; providing a penalty for failing or neglecting so to do," approved March 24, 1911.

Approved March 24, 1913, 296

Killing to be reported.

SECTION 1. Every conductor, engineer, section foreman, or other employee of any corporation, receiver, association, partnership, or person operating a railroad in this state who has personal knowledge of the injury

or killing of any live stock of any description by the running of any engine or engines, car or cars over or against any such live stock, shall immediately report the same by notice in writing to the general superintendent or division superintendent of the railroad for which he is working, unless he is aware that such notice has already been given by some employee of such corporation to such general superintendent or division superintendent.

Penalty for neglecting to report.

SEC. 2. Every conductor, engineer, section foreman, or other employee of any corporation, receiver, association, partnership, or person operating a railroad in this state that shall fail or neglect to comply with the provisions of the preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), or be imprisoned in the county jail not less than ten (10) days nor more than thirty (30) days, or be punished by both such fine and imprisonment.

Railroads to post notice—Duplicate notice filed.

SEC. 3. Every person, association, or corporation operating a railroad within this state, or receiver of an association or corporation so operating, that shall injure or kill any live stock of any description by the running of any engine or engines, car or cars, over or against any such live stock, shall within five days thereafter post for a period of at least thirty days at the first railroad station in each direction from the place of such injury or killing, a notice in writing in some conspicuous place on the outside of such stations, and within ten days after such injury or killing of any such live stock file a duplicate of such notice with the county clerk of the county in which the stock is injured or killed, which notice shall contain the number and kind of animals so injured or killed, and a full description of each, with the time and place, as near as may be, of such injury or killing, and shall be dated and signed by some officer or agent of such person, association or corporation operating such railroad.

Penalties for railroads.

SEC. 4. Every corporation, receiver, association, or person which shall fail, neglect or refuse to comply with the provisions of the preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty-five dollars (\$25) nor more than two hundred and fifty dollars (\$250).

Previous act repealed.

SEC. 5. An act entitled "An act requiring railways to give public notice of live stock killed or injured by their locomotives or cars, providing a penalty for failing or neglecting so to do," approved March 24, 1911, is hereby repealed.

An Act to provide for the maintenance of fences along railroads and for damages for the killing of live stock.

Approved March 24, 1917, 357

Railroads to fence track.

SECTION 1. Railroad corporations must make and maintain a good and sufficient fence on both sides of their track and right of way. In case they do not make and maintain such fence, if their engines or cars shall kill or maim any cattle or other domestic animals upon their line of road, they must pay to the owner of such cattle or other domestic animals a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed.

Not to apply in cities.

SEC. 2. Nothing in this act shall require any railroad company to fence its right of way through any town or city.

An Act requiring railroads to construct livestock guards on their rights of way.

Approved March 24, 1917, 399

Must erect guards at crossings.

SECTION 1. Every person, lessee, receiver, firm, copartnership, or corporation owning, leasing, or operating any railroad in, or through any part of, the State of Nevada, shall, wherever a public road or highway crosses the fenced-in right of way of such railroad, construct such barriers, guards or other devices as will effectually prevent the entrance from such public road or highway on to the said right of way of cattle, horses, mules and burros. Such barriers, guards, or other devices shall not be placed across, or in any wise obstruct, such public road or highway.

Penalty for neglect.

SEC. 2. If any person, lessee, receiver, firm, copartnership or corporation owning, leasing, or operating any railroad in, or through any part of, the State of Nevada, shall fail to construct such barriers, guards, or other devices specified in section one of this act, and any cattle, horses, mules, or burros shall be killed, maimed, or injured on any part of such unprotected right of way, the person, lessee, receiver, firm, copartnership or corporation so offending shall pay to the owner, or agent of the owner, of any such cattle, horses, mules or burros the full market value of such animals as it was before such injury occurred.

An Act to provide for the conditional sale of railroad and street-railway equipment or rolling stock, to regulate the making and recording of contracts therefor and declarations of the payment or performance thereof and to authorize their recordation in the office of the secretary of state.

Approved March 27, 1913, 451

Conditional sale of railroads or street railways.

SECTION 1. In any contract for the sale of railroad or street-railway equipment or rolling stock, it shall be lawful to agree that title to the property sold or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; *provided*, that no such contract shall be valid as against any subsequent judgment creditor or any subsequent bona-fide purchaser for value and without notice, unless (1) the same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee, lessee, or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgments of deeds, and in the same manner as deeds are acknowledged or proved; (2) such instrument shall be filed for record in the office of the secretary

of state of this state; (3) each car or locomotive engine so sold, leased or hired, or contracted to be sold, leased, or hired as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked in letters not less than one inch in size on each side thereof, followed by the word "owner," or "lessor," or "bailor," as the case may be.

Contracts filed, where.

SEC. 2. The contracts herein authorized shall be filed with the secretary of state and recorded by him in a book of records to be kept for that purpose. And on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect shall be made by the vendor, lessor, or bailor, or his or its assignee, which declaration shall be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid. The secretary of state shall collect and pay into the state treasury five dollars for filing each of such contracts or declarations and twenty cents per folio for recording the same.

Not to invalidate certain contracts.

SEC. 3. This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in section 1 hereof, and any such contract heretofore made may, upon compliance with the provisions of this act, be recorded as herein provided.

An Act making it unlawful for any railroad and other transportation company doing business in the State of Nevada and any agent, officer or servant of any railroad or other transportation company, to require any employee of such railroad or transportation company to purchase of any such company or any particular person, firm or corporation or any particular place or places, the uniforms or other clothing or apparel required by any such railroad or other transportation company to be used by such employees in the performance of their duties as such, and fixing the penalty thereof.

Approved March 20, 1913, 172

Applies to transportation companies.

SECTION 1. It shall be unlawful for any railroad or other transportation company doing business in the State of Nevada, or any officer, agent, or servant of such railroad or other transportation company, to require any conductor, engineer, brakeman, fireman, or any other employee, as a condition of his continued employment, or otherwise to require or compel or attempt to require or compel, any such employee to purchase of any such railroad or other transportation company, or of any particular person, firm or corporation, or at any particular place or places, any uniform or other clothing or apparel, required by any such railroad or transportation company to be used by any such employee in the performance of his duty as such; any such railroad or transportation company, or any officer, agent or servant thereof, who shall order or require any conductor, engineer, brakeman, fireman, or any other person in its employ, to purchase any uniform or other clothing or apparel as aforesaid, shall be deemed to have required such purchase as a condition of such employee's continued employment.

Penalties for violation.

SEC. 2. Any railroad or other transportation company doing business in the State of Nevada, or any officer, agent or servant thereof, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not less

than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county where the misdemeanor is committed not exceeding six months.

RESIDENCE

3609. Cited, *Fleming v. Fleming*, 36 Nev. 136-141 (134 P. 445).

Cited, *Tiedemann v. Tiedemann*, 36 Nev. 498 (137 P. 824).

Under this section and Rev. Laws, 5838, and Stats. 1911, 318, it was held that there is no necessary repugnancy between the provisions of the Revised Laws relating to residence and the act of 1911; the latter merely adding the requirement of physical presence to the former general requirement of the intention permanently to reside, so that the plaintiff, taking up her residence solely for the purpose of maintaining a divorce action, did not acquire such residence as was necessary to give the court jurisdiction of her suit. *Presson v. Presson*, 38 Nev. 204, 205 (147 P. 1081).

3610-16. Repealed, Stats. 1913, 567.

3610. Cited, *Presson v. Presson*, 38 Nev. 204, 205 (147 P. 1081).

REVENUE

3617. Cited, *State ex rel. Eggers v. Esser*, 35 Nev. 433, 434 (129 P. 557).

3618. Where the board of county commissioners had complied with this section, it was an ultimate act in pursuance of this section and Rev. Laws, 3762, 3763, relating to their duties "to levy annually," such statutes contemplating but one annual levy; consequently mandamus would not lie to compel a levy under the subsequently enacted statute of March 9, 1915 (page 97), the proper construction of such acts being that the levy should be made at the time when the county levy is regularly made. *State ex rel. Reno School District v. Washoe County Commissioners*, 38 Nev. 269, 272, 274 (149 P. 191).

3619. Cited, *State ex rel. Eggers v. Esser*, 35 Nev. 436 (129 P. 557).

3621. Under Const. art. 10, and this section it was held that where \$100 worth or more of labor has been expended on a patented mining claim during any one year and prior to the final assessment, the mine is exempt from taxation, except on the proceeds thereof. *Goldfield Con. Mines Co. v. State*, 35 Nev. 178, 181 (127 P. 77).

Cited, *Esmeralda County v. Mineral County*, 37 Nev. 182 (141 P. 73).

Const. art. 10, as amended, this section, and Rev. Laws, 3622, authorize and direct that all property of every kind, character and nature not specifically exempted shall be subject to taxation, and authorize a tax on the intangible property of an express company engaged in interstate and intrastate business. *State v. Wells Fargo & Co.*, 38 Nev. 505, 529 (150 P. 836).

3622. See *State v. Wells Fargo & Co.*, 38 Nev. 505, under section 3621.

3624. Assessment—Franchises, how assessed—Penalty for neglect or refusal to make statement—District attorney to prosecute.

SEC. 8. Between the first day of January and the second Monday of July in each year, the county assessor, except when otherwise required by special enactment, shall ascertain, by diligent inquiry and examination, all property in his county, real and personal, subject to taxation, and also the names of all persons, corporations, associations, companies, or firms, owning the same; and he shall then determine the true cash value of all such

property, and he shall then list and assess the same to the person, firm, corporation, association, or company owning it. In arriving at the value of all public utilities the intangible or franchise element shall be considered as an addition to the physical value and a portion of the true cash value. For the purpose of enabling the assessor to make such assessments, he shall demand from each person or firm, and from the president, cashier, treasurer, or managing agent of each corporation, association, or company, including all banking institutions, associations, or firms within his county, a statement, under oath or affirmation, of all the real estate and personal property within the county, owned or claimed by such persons, firm, corporation, association, or company. If any person, officer, or agent shall neglect or refuse, on demand of the assessor or his deputy to give, under oath or affirmation, the statement required by this section, or shall give a false name, or shall refuse to give his or her name, or shall refuse to swear or affirm, he or she shall be guilty of a misdemeanor, and shall be arrested upon complaint of the assessor, or his deputy, and upon conviction before a justice of the peace of the county, he or she shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term not less than ten days nor more than three months, or by both such fine and imprisonment, at the discretion of the court. If the owners of any property not listed by another person shall be absent or unknown, or fail to make the statement under oath or affirmation, as provided herein, within five days after demand is made therefor, the assessor shall make an estimate of the value of such property and assess the same accordingly. If the name of such absent owner is known to the assessor the property shall be assessed in his or her name; if unknown to the assessor the property shall be assessed to unknown owners. It is hereby made the duty of the assessor, at the end of each month, to report to the district or prosecuting attorney of the county the names of all persons neglecting or refusing to give the statement as required by this section of this act, and it is hereby made the duty of such district or prosecuting attorney to prosecute all persons so offending. *As amended, Stats. 1913, 162; 1915, 178.*

3623. Under this section and Rev. Laws, 4902, it was held that the term "assessment roll," as used in section 4902, means the whole roll for the assessment of taxes, including not only the assessment of real and personal property mentioned in Rev. Laws, 3633, but the assessment of the proceeds of mines mentioned in Rev. Laws, 3696, as well. *Esmeralda County v. Mineral County*, 37 Nev. 180-182 (141 P. 73).

Similar section (Stats. 1913, 165) cited, *Esmeralda County v. Mineral County*, 37 Nev. 181 (141 P. 73).

This section does not control Rev. Laws, 3883, subsequently enacted, which provides that no patented or state contract land shall be assessed for less than \$1.25 per acre. *State ex rel. Central Pacific Railway Co. v. Nevada Tax Commission*, 38 Nev. 112-115 (145 P. 905).

Rev. Laws, 3797, this section, and Rev. Laws, 3800, do not delegate legislative power to the assessors acting severally or collectively in determining whether property is subject to taxation, but the only discretion conferred on the board of assessors is to determine whether other kinds of property than those enumerated by statute can be valued and assessed more uniformly by the board than by the county assessors acting separately, and the tangible and intangible property of an express company may be assessed. *State v. Wells Fargo & Co.*, 38 Nev. 506, 530, 536 (150 P. 836).

Under *Cutting*, 1215, similar to this, and *Cutting*, 1084, similar to this section, it was held that where defendant loaned money to bankrupts, receiving as security absolute deed to certain real and personal property, which was in fact a mortgage, the fact that security was made in the form of a deed to prevent the assessment and collection of taxes on the money loaned was collateral only, and did not so taint the security as to render it unenforceable as against the mortgagor's trustee in bankruptcy. *Alter v. Clark*, 193 F. 154, 158.

3632. Assessors to prepare list—Limit of cost.

SEC. 16. It shall be the duty of the assessor in each of the respective counties of the state, on or before the third Monday in July in each year, to prepare a printed list of all the taxpayers in the county and the total valuation of property on which they severally pay tax. A copy of said list shall be by the assessor delivered in person or mailed to each and every taxpayer in the county; *provided*, that the cost of printing the aforesaid list shall not exceed twenty cents for each name for as many copies as there are names on the list. The several boards of county commissioners in the state are authorized and empowered to allow the bill contracted by the assessor under this section and the several county auditors are authorized to draw their warrant in payment of the same. *As amended, Stats. 1913, 165; 1915, 328.*

3633. Repealed, Stats. 1913, 182.

See Esmeralda County v. Mineral County, 37 Nev. 180, under section 3623.

3638. Board of equalization—Meeting—Powers of board—Duty of clerk—Publication.

SEC. 23. The board of county commissioners of each county shall constitute a board of equalization, of which board the clerk of the board of county commissioners shall be the clerk. The board of equalization of each county shall meet on the fourth Monday of July in each year, and shall continue in session from time to time until the business of equalization presented to them is disposed of; *provided, however*, that they shall not sit after the second Monday in August. The board shall have power to determine the valuation of any property assessed, and may change and correct any valuation, either by adding thereto or deducting therefrom such sum as shall be necessary to make it conform to the actual cash value of the property assessed, whether said valuation was fixed by the owner or assessor; except that in case where the person complaining of the assessment has refused to give the assessor his list under oath, as required by this act, no reduction shall be made by the board in the assessment made by the assessor. If the board finds it necessary to add to the assessed valuation of any property on the assessment roll, they shall direct the clerk to give notice to the person so interested, by letter, deposited in the postoffice, or express, or otherwise, naming the day when they shall act in that case, and allowing a reasonable time to appear. As soon as possible after the adjournment of the board in August, its clerk shall make out a list of all persons who have not appeared before the board, the valuation of whose property has been added to on the assessment roll, and shall state the amount so added, and list of all property, the valuation on which has been added to on the assessment roll, with the amounts so added, the owners of which have not appeared before the board; and the board of county commissioners shall cause the same to be published in one newspaper in the county, if there be any, and if not, then by posting one copy of the same in a public place in each election precinct in the county, and any person, to the assessed value of whose property there was an amount added, not appearing before the board of equalization, may appear before the state board of equalization at its next regular session, and upon making an affidavit that he had no knowledge of such increased valuation of his property, he shall be given a hearing and the final judgment of the state board, and the secretary of the state board shall note all changes made and certify them to the county auditor, who shall make the changes required on the assessment roll. The recorder of the county shall be present and attend all meetings of the county board of equalization, with

an abstract of all unsatisfied mortgages and liens shown in the records of his office, arranged in alphabetical order, for which service he shall receive no compensation, and the county board of equalization shall make use of said abstract, and all other information that it can procure from the recorder or his office, or otherwise, in equalizing the assessment roll of the county, and may require the assessor to enter upon such assessment roll any other property which has not been assessed; and the assessment and equalizations so made shall have the same force and effect as if made by the assessor before the delivery of the assessment roll by him to the clerk of the board of county commissioners. *As amended, Stats. 1915, 329.*

3644. Notice to taxpayers, how given—Taxes delinquent.

SEC. 32. Upon receiving the assessment roll from the auditor, the ex officio tax receiver shall proceed to receive taxes, and shall forthwith give notice, by publication in some newspaper published in his county, and if none be so published, then by posting notices in three public and conspicuous places in the county, that taxes will be delinquent on the first Monday in December, and if any person charged with taxes which are a lien on real estate, according to existing law, shall fail to pay one-half of said taxes prior thereto, then the entire tax shall become due, and a penalty of fifteen (15%) per cent will be added to the amount thereof; and the tax receiver shall forward by mail a post-card to each taxpayer, if the postoffice address of such taxpayer is known to him, notifying him of the amount due. *As amended, Stats. 1919, 412.*

3646. Taxes delinquent—Delinquent tax list—Notice to be given.

SEC. 34. On the first Monday in December the ex officio tax receiver, at the close of his official business on that day, shall enter upon the assessment roll a statement that he has made a levy upon all property therein assessed, the taxes upon which have not been paid, and shall mark the word "delinquent" on the assessment roll opposite the name of the person or description of the property liable for such taxes, and shall immediately ascertain the total amount of taxes then delinquent, and prepare a list which shall specify and give:

First—Roll number, page or reference;

Second—Name of owner, if known;

Third—Amount of taxes due, together with penalty;

and shall file a copy of same, verified by oath of himself or deputy, in the office of the county auditor.

A penalty of three per cent per month shall be added and collected by the tax receiver on all such delinquent property from the date of delinquency until paid, or if still unpaid on the first Monday in June next succeeding, such penalty of three (3%) per cent per month shall be added to the original tax, together with the penalty of fifteen (15%) per cent hereinbefore provided, and the same shall become a lien on the property so assessed; and the tax receiver shall immediately prepare a delinquent list which shall include this property, together with any property that may become delinquent on account of the failure to pay the second installment of taxes. *As amended, Stats. 1919, 413.*

3651. Notice of sale—What to specify—Form of notice—Quantity sold.

SEC. 39. Immediately after the second Monday in June of each year, the county treasurer and ex officio tax receiver shall advertise the property upon which delinquent taxes are a lien for sale, in all cases where the delinquent tax, exclusive of poll-taxes and penalties, does not exceed the sum of three (\$300) hundred dollars, such sale to be made at the front door of the county courthouse on the third Monday in July next succeeding. Such notice shall be published in a newspaper, if there be one in the

county, at least once a week from the date thereof until the time of sale, and if there be no newspaper in the county such notice shall be posted by the auditor in at least five conspicuous places within the county; *provided*, that the cost of publication in each case shall be charged to the delinquent taxpayer and shall, in no case, be a charge against the state or county; *and provided further*, that such publication shall be made at not more than legal rates. Such notice shall be posted or published at least twenty-five days prior to date of sale, and shall specify and give:

First—The name of the owner, if known.

Second—The amount of taxes due from him, together with the penalty and costs.

Third—The description of the property on which such taxes are a lien and which will be sold for the payment thereof.

Fourth—And that ten (10%) per cent on such taxes and cost of advertising will be collected in addition to the original tax, or the property sold for all of said sums, specifying the time and place of said sale, and that such sale is subject to redemption within one year after the date of sale by payment of said sums with three (3%) per cent per month thereon from day of sale until paid; *provided*, that such redemption may be made in accordance with the provisions of the civil practice act of this state in regard to real property sold under execution, except as to percentage of redemption as in this section provided.

The bidding at tax sales under the provisions of this section shall be for the smallest quantity of property that will pay the taxes, penalty, and costs. *As amended, Stats. 1917, 35; 1919, 413.*

3652. Certificate—Treasurer may buy—Property may be redeemed.

SEC. 40. After receiving the amount of taxes, penalty and costs, the treasurer shall make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed, if the land is not sooner redeemed; *provided*, that if no one else shall bid upon any piece of land at such sale, the treasurer shall bid the same in for the benefit of the county and state, and file a certificate thereof with the county recorder; and the same shall be subject to redemption from the treasurer the same as from a private purchaser; and if not redeemed, the title thereto shall vest in the county for the benefit of the county and state, and may be disposed of as provided by law. Until the period of redemption as provided by law has expired, the property described in the certificate of sale shall be assessed to the person named in such certificate of sale, and before redemption by the owner thereof such certificate holder shall be reimbursed for any additional taxes thereon he may pay, together with interest thereon as provided by law. One of the duplicate certificates of sale issued by the treasurer, in case of a private purchaser, shall be filed in the office of the county recorder. *As amended, Stats. 1919, 414.*

3680. Under Rev. Laws, 4835, authorizing the supreme court to reverse, affirm or modify the judgment or order appealed from, the court has power to modify a judgment for delinquent taxes by reducing the amount of the recovery, and will so modify the judgment where the attorney-general, the district attorney, and the attorney for defendant stipulate for such modification, notwithstanding this section. *State v. Nevada Copper Belt R. R. Co., 41 Nev. 222, 226 (168 P. 737).*

3684. Under this section, defendant, in an action for delinquent taxes, has the burden

of establishing excessive valuation on his property. *State v. Wells Fargo & Co.*, 38 Nev. 506, 525 (150 P. 836).

Under this section it was held that, if a tax suit by the state against plaintiff could not be removed by plaintiff to the federal court on the ground of diversity of citizenship, though plaintiff was a foreign corporation, as the defense against an excessive assessment, which could be interposed at law, was not available in the federal courts, and as a state cannot restrict the jurisdiction of the federal courts, the federal district court had jurisdiction to entertain a suit by plaintiff to enjoin enforcement of an excessive assessment, it having no plain and adequate remedy at law. *Nevada-California Power Co. v. Hamilton*, 235 F. 320.

There is no want of due process; the mode of resisting the tax under this section being by a judicial proceeding wherein process issues and an opportunity is afforded for a hearing, and payment being enforced only if there is a judgment sustaining the tax. *Wells Fargo & Co. v. State of Nevada*, 39 S. C. R. 62, 63.

3657-3664. An action by the state, under these sections to collect taxes, cannot, though the defendant be a foreign corporation, be removed to the federal courts on the ground of diversity of citizenship, because the state is not a citizen. *Nevada-California Power Co. v. Hamilton*, 235 F. 319, 335.

An action instituted in the state courts cannot be removed to the federal courts on the ground that a question arising under the constitution or laws of the United States is involved unless the complaint necessarily shows that such questions are involved; it being insufficient that they be raised by other pleadings or in anticipation of defenses. *Id.*

An adequate remedy at law, which can be administered only in a state court, is not sufficient to compel a federal court to dismiss an equitable cause over which its jurisdiction is otherwise valid and complete, and relegate the complainant for his only alternative relief to a state court. *Id.*

3659-3665. There is no want of due process within the fourteenth amendment because valuation by board for taxation being without notice to property owner; the mode of enforcing the tax under these sections, being by a judicial proceeding wherein process issues and an opportunity is afforded for a full hearing, and payment being enforced only after there is a judgment sustaining the tax. *Wells Fargo & Co. v. State of Nevada*, 39 S. C. R. 62, 63.

3666. Civil practice act to apply—Redemption.

SEC. 54. An act to regulate proceedings in civil cases in the courts of justice in the State of Nevada, approved March 9, 1869, and the several amendments thereto, or amendments which may hereafter be made thereto, or laws passed under the government of the State of Nevada, so far as the same are not inconsistent with the provisions of this act, are hereby made applicable to the proceedings under this act, and any deed derived from the sale of real property under this act shall be conclusive evidence of the title, except as against actual frauds or the payment of the taxes by one not a party to the action or judgment in or upon which such sale was made, and shall entitle the holder thereof to possession of such property, which possession may be obtained by action in a justice's court for the unlawful withholding thereof in the same manner as where tenants hold over after the expiration of their lease; *provided*, that the officer in selling such property shall sell only the smallest quantity that will pay the judgment and all costs. All sales of real estate sold for taxes shall be subject to redemption at any time within one year after date of sale by the payment of all costs connected with the suit and sale, together with interest at the rate of three per cent per month from date of sale up to time of redemption. When property is sold belonging to minors or persons under legal disability, they shall have one year after such disability is removed to redeem such property, as in other civil cases, by paying the

whole amount of the judgment and all subsequent taxes and interests paid by and due to the purchaser at such sale, and fifty per cent in addition thereto. But this provision shall not apply when the executor or administrator of the estate, or the father, or, in case of his death, the mother or guardian of such minor children, or insane persons, has been personally served with process.

Not to apply to tax sales.

SEC. 3. The above amendments shall not apply to redemptions from tax sales heretofore held, but only to property sold after the passage and approval of this act. *As amended, Stats. 1917, 36.*

Under this section, enforcement of any legal tax assessment under which proceedings were about to be brought to sell them for taxes, will be enjoined, for a tax deed based on such proceedings would constitute a cloud on the title. *Nevada-California Power Co. v. Hamilton, 235 F. 318, 332.*

Where an assessment of taxes on real property was not wholly void but was excessive, the taxes, if paid, cannot be recovered in an action against the taxing officials, the payment, though made under protest, being presumed to be voluntary. *Id.*

3687. Cited, *Esmeralda County v. Mineral County, 37 Nev. 182 (141 P. 73).*

3696. See *Esmeralda County v. Mineral County, 37 Nev. 180*, under section 3623.

3713. Auditor to issue poll-tax receipts.

SEC. 101. The auditor shall from time to time issue to the assessor (who shall be ex officio poll-tax collector) so many of the receipts for poll taxes as he may need, taking his receipt therefor and charging him therewith, such issuance to consist of the signing, by the auditor, of the poll-tax receipts, and their delivery to the assessor. *As amended, Stats. 1913, 103.*

3727-54. Repealed, Stats. 1915, 248.

3733. A bona-fide social club, which disposes at its clubhouse of liquors to members and guests at a fixed charge as an incident to the general purposes of the club, the profit on the sales going to pay the general expenses of the organization, is not required to take out a license by this section; the term "business" in such statute meaning business in the trade or commercial sense. *State v. University Club, 35 Nev. 475, 481 (130 P. 468; 44 L. R. A. (N.S.) 1026).*

3734. See *State v. University Club, 35 Nev. 475*, under section 3733.

Fortune-tellers must pay license.

SEC. 123½. Every fortune-teller, clairvoyant, palmist, or medium charging, collecting, or receiving any consideration, or any thing of value, for his or her services, directly or indirectly, shall pay a license of \$25 the month, or \$50 the quarter; *provided*, that the terms herein used include every person or persons who read or purport to read, or to tell fortunes, or to predict or to tell the future or past by cards, palmistry, clairvoyancy, or other methods. *Added, Stats. 1915, 18.*

3746. In mandamus proceedings by the board of county commissioners to compel the county auditor to make the joint report required by this section, the county treasurer was not a necessary party, where it appeared that he was willing to perform his part in making the report. *State ex rel. Haviland v. Bonnifield, 37 Nev. 44, 45 (138 P. 906).*

3748. Under this section and Stats. 1913, 180, sec. 7, where taxpayers paid the taxes under protest, but did not commence any court action, it was held that they were entitled to relief only upon complying with the terms of the statute, and the county treasurer could not withhold settlement from the state treasurer on the ground that the taxes had been paid under protest. *State ex rel. Cole v. Miller, 38 Nev. 494, 495 (151 P. 943).*

3755. Under Cutting, 1215, similar to this, and Cutting, 1084, similar to Rev. Laws, 3624, it was held that where defendant loaned money to bankrupts, receiving as security absolute deed to certain real and personal property, which was in fact a mortgage, the fact that security was made in the form of a deed to prevent the assessment and collection of taxes on the money loaned was collateral only, and did not so taint the security as to render it unenforceable as against the mortgagor's trustee in bankruptcy. *Alter v. Clark*, 193 F. 153, 157.

3755-6. Repealed, Stats. 1915, 68.

3756. Plaintiff in an action to foreclose a mortgage failed to file any affidavit that all taxes on the money or debts secured had been paid as required by this section. Held, in the absence of a provision making a judgment void by failure to comply with the statute, that its purpose was only to aid in the enforcement of other tax laws, and that, as the objection went neither to a question of fraud upon the court nor the defendant mortgagor, it was not ground for setting aside a default judgment therein. *Nevada Con. M. & M. Co. v. Lewis*, 34 Nev. 501, 502, 522 (126 P. 105).

3762. See *State ex rel. Reno School District v. Washoe County Commissioners*, 38 Nev. 269, under section 3618.

3763. See *State ex rel. Reno School District v. Washoe County Commissioners*, 38 Nev. 269, under section 3618.

3767. Delinquent property sold to county for taxes—How resold.

SECTION 1. Whenever the time allowed by law for the redemption of any property sold to any county treasurer for delinquent taxes, under the provisions of section 55 (ante, sec. 3667) of the act to which this act is supplementary, shall have expired, and the treasurer shall have come in possession of a deed to any property of an assessed value of less than five hundred dollars, the board of county commissioners of such county may, by an order entered upon the record of the proceedings of said board, direct the treasurer or his successor in office to sell such property, and the proceeds of such sale shall be applied as now provided by law; *provided*, that notice of such sale shall be posted in at least three public places in the county, including one at the courthouse and one on the property, for a period of not less than twenty days prior to the day of sale, or in lieu of such posting by the publication of such notice for a like period of time in some newspaper published within said county, if the board of county commissioners shall by their order so direct. *As amended, Stats. 1917, 423.*

3768-74. Repealed, Stats. 1915, 247.

3777-85. Repealed, Stats. 1915, 248.

Cited, *State v. University Club*, 35 Nev. 480 (130 P. 468; 44 L. R. A. (N.S.) 1026).

3777. See *State v. University Club*, 35 Nev. 475, under section 3733.

3778. See *State v. University Club*, 35 Nev. 475, under section 3733.

3782. Similar section (Stats. 1905, 228) cited, *State ex rel. Cole v. Hill*, 40 Nev. 119, 120 (160 P. 772).

3786-90. Repealed, Stats. 1912, 10.

3797. See *State v. Wells Fargo & Co.*, 38 Nev. 506, under section 3624.

3800. See *State v. Wells Fargo & Co.*, 38 Nev. 506, under section 3624.

3797-3813. Repealed, Stats. 1913, 182.

3818. Cited, *State ex rel. Nevada Tax Commission v. Boerlin*, 38 Nev. 42, 45 (144 P. 738).

Cited, *State ex rel. Reno School District v. Washoe County Commissioners*, 38 Nev. 275, 276 (149 P. 191).

3820—Shares assessed, how—Who deemed owners.

SEC. 2. All shares of stock in banks, whether of issue or not, existing by authority of the United States, or of the State of Nevada, or of any other state, territory, or foreign government, and located within the State of Nevada, shall be assessed to the owners thereof in the county, city, town, or district where such banks are located, and not elsewhere, in the assessment of all state, county, town, or special taxes, imposed and levied in such place, whether such owner is a resident of said county, city, town, or district, or not. All such shares shall be assessed at their full cash value on the first day of May, first deducting therefrom the proportionate value of the real estate belonging to the bank and the amount or value of such mortgages or trust deeds owned by the bank and on which the bank has paid the taxes or authorized the assessment thereof in its name, at the same rate and no greater than that at which other moneyed capital in the hands of citizens and subject to taxation is by law assessed. And the persons or corporations who appear from the records of the banks to be the owners of shares at the close of the business day next preceding the first day of May in each year shall be taken and deemed to be the owners thereof for the purposes of this section. *As amended, Stats. 1915, 174.*

3826-36. Repealed, Stats. 1917, 254.

See "An act regulating the fiscal management of counties, cities, town, school districts, and other governmental agencies," Stats. 1917, 249, ante.

3827. Cited, *State ex rel. Nevada Tax Commission v. Boerlin*, 38 Nev. 43 (144 P. 738).

3831. This section and Rev. Laws, 3832, does not, in violation of Const. art. 14, sec. 17, relate to a subject not embraced in the title. *First National Bank of San Francisco v. Nye County*, 38 Nev. 123, 124, 133 (145 P. 932; Ann Cas. 1917C, 1195).

Under these sections, no power to execute a negotiable note to secure payment of a loan can be implied. *Id.*

Giving negotiable notes for temporary loans made by county commissioners under this section is not within the purview of the 13th clause of Rev. Laws, 1508, authorizing county commissioners to do things "strictly necessary" to the full discharge of their powers. *Id.*

Cited, *Chartz v. Carson City*, 39 Nev. 297, 298 (156 P. 925).

3832. See *First National Bank of San Francisco v. Nye County*, 38 Nev. 123, under section 3831.

Cited, *Chartz v. Carson City*, 39 Nev. 298 (156 P. 925).

3838. Under Stats. 1913, 175, the tax commission law, and this section, it is implied that the commission may fix the valuation lower than the minimum of \$1.25 per acre, and an owner feeling aggrieved on the ground that the minimum is too high may appear before the commission and prove that the cash valuation is less than the minimum, and, on the commission so finding, they must make a reduction in the valuation accordingly, and to this extent this section is superseded, but it still applies to county assessors making the original assessment. *State ex rel. Central Pacific Ry. Co. v. Nevada Tax Commission*, 38 Nev. 112-115 (145 P. 905).

3841. Disposition of poll-taxes.

SECTION 1. From and after the passage of this act all money received from poll-tax collections, made from persons residing outside the limits of any incorporated town or city within this state, shall be turned into the general road fund of the county in which said poll-tax shall be collected. The county commissioners of the various counties may appropriate the money of said general road fund for the building and maintenance of such public roads of their respective counties as they may deem for the best interest of the public.

From and after the passage of this act all money received from poll-tax

collections, made from persons residing within the limits of any incorporated town or city within this state, shall be turned over monthly, as collected, to the proper official or officials of such incorporated town or city, and be by such incorporated town or city expended in the building, improvement and care of the public streets, alleys and roads therein situated. *As amended, Stats. 1913, 18; 1919, 119.*

3843-4. Repealed, Stats. 1915, 423.

3845-61. Repealed, Stats. 1915, 423.

3866. Personal property taxes, when collected.

SEC. 3. It is hereby made a specific duty of all county assessors, at the time of assessing personal property, to collect the entire amount of tax on such personal property, unless the owner thereof shall be the owner of real estate, situate within his county, sufficient, in the judgment of the county assessor, to amply secure the payment of the entire tax on both such real estate and personal property should a lien attach thereto by reason of such taxes becoming delinquent; *provided*, should such assessment be made at any time between the first day of January and the date on which the tax is levied by the board of county commissioners for any year, such collection shall be made by the assessor on the regular tax levy for the preceding year, plus ten per cent. The county assessor shall immediately turn into the county treasurer the full amount of any such collection. The county treasurer shall place ten per cent thereof in a special fund and apportion the remainder as other taxes are apportioned. The ten per cent shall remain in the special fund, unapportioned, until such time as the board of county commissioners levy the tax for the then current year, at which time, if the levy is in excess of the rate applied to such personal property for the preceding year, the amount of the tax figured at such excess shall be deducted from the special fund, apportioned as other taxes, and the balance refunded to party in interest; *provided*, if the levy for the then current year shall be less than for the preceding year, no refund, other than the total amount of the special fund, shall be made to any party in interest. *As amended, Stats. 1915, 154.*

3867-71. Repealed, Stats. 1915, 248.

3872-76. Repealed, Stats. 1915, 248.

3877-8. Repealed, Stats. 1915, 248.

3879. Drummers and traveling salesmen representing mercantile houses in other states are exempt from license within this state under the provisions of the federal constitution relative to interstate commerce; and the purpose of this section was to place drummers and salesmen representing mercantile houses within the state upon the same equality. *Byran v. City of Sparks, 36 Nev. 573, 575 (137 P. 522).*

3879-80. Repealed, Stats. 1915, 248.

3880. See *Byran v. City of Sparks, 36 Nev. 573*, under section 3879.

3881. Who may procure license.

SECTION 1. Any male person over the age of twenty-one years may procure a license for an exhibition in a public place for any contest or exhibition with gloves between white men, and the weight of the gloves used in said contest or exhibition shall not be less than four ounces; *provided*, such contest or exhibition may be for a wager or reward; *and provided further*, such contest or exhibition shall not continue beyond a period of twenty-five rounds; *provided*, that the chief of the state police and the sheriff of the county or their representatives in which any boxing contest

shall be held shall be present at the ringside and see that no brutality is shown; *and provided further*, that not more than one license shall be issued for any boxing contest in any county on the same date. *As amended, Stats. 1913, 234; 1919, 69.*

3882. Sheriff to issue license—Cost thereof.

SEC. 2. The sheriff of any county in which the exhibition or contest named in section 1 of this act is to be held, shall issue a license for such exhibition or contest upon the payment to him of the sum of one hundred dollars (\$100). *As amended, Stats. 1913, 234.*

3883. Auditor to prepare licenses.

SEC. 3. Blank licenses shall be prepared by the county auditor of the county in which the exhibition or contest named in section 1 of this act is to be held, which license shall be issued and accounted for as is by law provided for in respect to other county licenses. Each license delivered by the sheriff under the provisions of this act shall contain the name of the licensee and the name of the contestants. *As amended, Stats. 1913, 234.*

3889. Penalties for noncompliance.

SEC. 9. Any person or persons who shall participate in, conduct, or manage any glove contest or exhibition contrary to the provisions of this act, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. *As amended, Stats. 1913, 234.*

3890-3894. It was held that the act violated article 1, section 8, of the constitution of the United States relating to interstate commerce. *Ex Parte Taylor and Rounds, 35 Nev. 504, 506 (131 P. 133).*

It also violates the fourteenth amendment and article 4 of section 2 of the constitution of the United States, relating to equal protection of the laws. *Id.*

3890-5. Repealed, Stats. 1913, 55.

Stats. 1913, 106, repealed, Stats. 1915, 318.

Stats. 1913, 106, cited, *Goldfield Con. M. & T. Co. v. Old Sandstorm Co.*, 38 Nev. 436.

Const. art. 10 (as amended), requiring the legislature to provide by law for a uniform and equal rate assessment and taxation and exempt from taxation enumerated property, and Rev. Laws, 3621, 3622, declaring that all property shall be subject to taxation, except exempt property, defining real estate, and declaring that the term "personal property" shall include all capital loaned, invested, or employed in trade, commerce or business, the capital stock of corporations doing business within the state, and all property not included in the term "real estate," authorize and direct that all property of every kind, character, and nature, not specifically exempted shall be subject to taxation, and authorize a tax on the intangible property of an express company engaged in interstate and intrastate business. *State v. Wells Fargo & Co.*, 38 Nev. 505, 529 (150 P. 836).

Cited, *Wren v. Dixon*, 40 Nev. 192 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).

Stats. 1913, 121, repealed, Stats. 1915, 7.

Stats. 1913, 175, repealed, Stats. 1915, 188, and "An act in relation to public revenues, creating the Nevada tax commission and the state board of equalization," etc., Stats. 1917, 328, substituted therefor.

Stats. 1913, 175, Sec. 3. This section requires the state tax commission to hold a regular session on the second Monday in October, at which session it shall equalize property valuations as provided in section 6. Section 4 provides that the commission shall have power to exercise general supervision and control over the entire revenue system of the state, in

pursuance whereof it shall possess special powers, among others, to require assessors, sheriffs, as ex officio collectors of licenses, and the clerks of county boards of equalization, to furnish such information in relation to assessments, licenses or the equalization of valuations as it may demand. Section 6 provides that at its regular session in October it shall review the tax rolls of the various counties and may raise or lower, for the purpose of state equalization, the valuations therein. Held, that while there is no express provision requiring revenue officers of the several counties to deliver or transmit to the commission the assessment roll, where the commission determines that, for the performance of its duties, it is convenient or necessary to have such rolls and makes demand therefor, it is the duty of the county revenue officers to comply with such demand. *Nevada Tax Commission v. Douglas County*, 36 Nev. 319, 321-323 (135 P. 609).

Sec. 4. See *Nevada Tax Commission v. Douglas County*, 36 Nev. 319, under section 3.

This section does not trespass upon any inherent right of county revenue officers, their duties being within the control of the legislature. *Id.*

Sec. 6. See *Nevada Tax Commission v. Douglas County*, 36 Nev. 319, under section 3.

This act implies that the commission may fix the valuation of land lower than the minimum of \$1.25 per acre, as fixed by Rev. Laws, 3838, and an owner feeling aggrieved, on the ground that the minimum is too high, may appear before the commission and prove that the cash valuation is less than the minimum, and, on the commission's so finding, they must make a deduction in the valuation accordingly, and to this extent Rev. Laws, 3838, is superseded, but it still applies to county assessors making the original assessment. *State ex rel. C. P. R. R. v. Nevada Tax Commission*, 38 Nev. 112-116 (145 P. 905).

This act does not empower the commission to order a board of county commissioners to reduce the rate of county taxation after the commission has increased the valuation. *State ex rel. Nevada Tax Commission v. Boerlin*, 38 Nev. 39, 40-44 (144 P. 738).

Stats. 1913, 280, Sec. 15. This section, providing that the act shall in no wise affect any statute now existent nor that may hereafter be enacted providing for the licensing of automobiles for hire, does not interfere with the power of a city to license and regulate the use of jitney busses. *Parte Counts*, 39 Nev. 61, 71, 72 (153 P. 93).

Stats. 1913, 376, repealed, Stats. 1915, 247.

Stats. 1913, 423, repealed, Stats. 1915, 248.

Stats. 1915, 90, c. 74, repealed, Stats. 1919, 184.

Stats. 1915, 180, repealed by implication by Stats. 1917, 328.

Stats. 1915, 236, sec. 3. Under sec. 3, sec. 6, sec. 8, sec. 9, sec. 10 of this act it was held that half of the amount from state as well as county licenses for such disposition in quantities less than a quart is to be paid to the city, and the balance only to the county treasurer, so that such half payable to the city is not included in "all moneys received" by the county treasurer for state liquor licenses "in accordance with the provisions of this act." for which section 11 requires him to account to the state treasurer, the word "amount" in section 10 referring to the total of two sums. *State ex rel. Cole v. Hill*, 40 Nev. 110, 112-121 (160 P. 772).

Sec. 7. Similar section (Stats. 1893, 25) cited, *State ex rel. Cole v. Hill*, 40 Nev. 119 (160 P. 772).

Sec. 9. Similar section (Stats. 1893, 25) cited, *State ex rel. Cole v. Hill*, 40 Nev. 119 (160 P. 772).

An Act exempting property of veterans.

Approved March 10, 1917, 65

Exemption of property of resident army or navy veterans.

SECTION 1. The property to the amount of one thousand dollars of every

resident in this state who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war, and received an honorable discharge therefrom, and not having an income to exceed \$900 per annum, shall be exempt from taxation; *provided*, that this exemption shall not apply to any person named herein owning property of the value of three thousand dollars (\$3,000) or more. No exemption shall be made under the provisions of this act of the property of a person who is not a legal resident of this state.

An Act regulating the manner of procedure for obtaining refund of state, county and other taxes which have been twice paid, and making an appropriation therefor.

Approved March 14, 1917, 174

Providing refund of doubly paid county tax.

SECTION 1. Wherever it shall appear to a board of county commissioners in any county in this state, by competent evidence, that through mistake or inadvertence the county and school-district tax for any one tax year has, by reason of the assessment of the same piece or pieces of property to two or more persons, been paid twice or more times, said board of county commissioners, by its unanimous resolution, may direct the county treasurer to refund such excess payment to the assignee of all claims for such overpayment.

Limitation.

SEC. 2. The claim therefor must be presented to the board of county commissioners within six months after such double payment of taxes has been made.

Same for state taxes.

SEC. 3. Whenever it shall appear to the state board of examiners of the State of Nevada, by competent evidence, that through mistake or inadvertence the state tax for any one tax year has, by reason of the assessment of the same piece or pieces of property to two or more persons, been paid twice or more times, said board of examiners, by its unanimous resolution, may direct the state controller to draw his warrant for refund of such excess payment in favor of the assignee of all claims for such overpayment.

Limitation.

SEC. 4. The claim therefor must be presented to the state board of examiners within two years after such double payment of taxes has been made.

Recourse for dissatisfied claimants—County.

SEC. 5. If any person shall feel aggrieved by the action taken by any board of county commissioners on any such claim, an action may be prosecuted thereon for and on behalf of such person against said county, as on other rejected county claims.

Same—State.

SEC. 6. If any person shall feel aggrieved by the action taken by said board of examiners on any such claim, an action may be prosecuted thereon for and on behalf of said person against the State of Nevada under and pursuant to the provisions of sections 3653-3655, Revised Laws of Nevada, 1912, which are hereby made applicable to any such action.

An Act defining certain duties of county auditors, county treasurers, and the state controller, and providing penalties for the violation thereof.

Approved March 24, 1917, 344

Duties of county auditors.

SECTION 1. It is hereby made the duty of the county auditor of each and every county in this state to prepare and forward to the state controller, at the times and in the manner hereinafter prescribed, the following statements:

(a) On the first day of December of each year a statement showing separately the valuation, rates of taxation and amounts of state and county taxes levied, with the totals thereof, of all property listed on the assessment rolls of his county for that year; *provided*, that so far as the proceeds of mines roll is concerned, the term "that year" is hereby construed to mean the first three quarters of the current year and the last quarter of the preceding year.

(b) On the first day of August of each year a statement showing separately the valuation, rates of taxation, amount of taxes levied, amount collected, amount delinquent subject to redemption, amount stricken from rolls by commissioners, and amount held in trust by county treasurer, with the totals thereof, of all property listed on the assessment rolls of his county for the preceding year; the term "preceding year" being the same period of time as "that year" mentioned in subdivision (a) of this section.

(c) On the first day of December of each year a statement showing the indebtedness of such county, bonded and floating, with the amount of each class and the rate of interest borne by such indebtedness, or any part thereof; the amount of cash in the county treasury; a careful estimate of the value of all property owned by the county; the number of poll-taxes collected; and the number of registered voters.

(d) On the third Monday of June and December of each year a report, with a duplicate thereof, both of which shall be also certified by the county treasurer, showing specially the total amount collected, and the amount due the state from each particular source of revenue for the preceding six months.

(e) The county auditor in each county in the state shall, on or before the tenth day of April, July and October of each year, make a statement and report to the board of county commissioners showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury during the quarter next preceding; the funds among which the same are distributed and the amount to each; the total amount of warrants drawn and paid on what funds; the total amount of warrants drawn and unpaid; the accounts or claims audited or allowed and unpaid and the fund out of which they are to be paid; and generally making a full and specific showing of the fiscal condition of the county.

(f) On or before the tenth day of January of every year the county auditor in each county in the state shall make a similar statement and report to the board of county commissioners covering the entire year next preceding. Such report shall be printed in pamphlet form and mailed, one copy each, to each of the taxpayers named and listed on the assessment roll of the county.

Duties of county treasurers.

SEC. 2. The county treasurer of each and every county in this state shall, on the third Monday of June and December of each year, settle in full with the state controller, and send to the state treasurer all funds which

shall have come into his hands as county treasurer for the use and benefit of the state, taking therefor a receipt from the state treasurer. He shall hold himself in readiness to settle and pay all moneys in his hands belonging to the state at all other times whenever required to do so by order signed by the state controller, who is hereby authorized to draw such order whenever he deems it necessary.

Duties of state controller.

SEC. 3. The state controller shall enter upon the semiannual reports mentioned in subdivision (d) of section 1 of this act the cash paid the state treasurer and the amount of credits allowed; and the county treasurer shall thereafter file the duplicate report with the county auditor, whereupon the auditor shall balance the treasurer's account. Such further and additional statements may be required by the state controller as in his judgment he deems necessary.

An Act to provide revenue for the support of the government of the State of Nevada, to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds, to provide for the enforcement of liens created by this act, and for suits to quiet title against claims of lien arising hereunder.

Approved March 26, 1913, 411

Inheritances taxed.

SECTION 1. A tax shall be and is hereby imposed upon the transfer of any and all property within the jurisdiction of this state, and any interest therein or income therefrom, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, not hereinafter exempted, which shall pass in trust or otherwise by will or by the statutes of inheritance of this or any other state or by deed, grant, sale or gift made without valuable and adequate consideration in contemplation of the death of the grantor, vendor, assignor, or donor, or intended to take effect in possession or enjoyment at or after such death, as specified in this act. For the purposes of this act, the ownership of shares of stock in a corporation owning property in this state shall be considered as the ownership of such interest in the property so owned by such corporation, as the number of shares so owned shall bear to the entire issued and outstanding capital stock of such corporation; and notes and other evidences of indebtedness secured by mortgage on real estate situated in this state are and shall be, upon the owners' death, subject to the inheritance tax hereinafter provided.

Rates on inheritances of \$25,000 or under.

SEC. 2. When the property or any interest therein or income therefrom so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value the sum of twenty-five thousand dollars, the tax hereby imposed shall be:

(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue or lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; *provided, however*, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of 1 per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or a widow of a son, or the husband of a daughter of the decedent, at the rate of 2 per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of 3 per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of 4 per centum of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than that hereinbefore stated; or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of 5 per centum of the clear value of such interest in such property.

Rates on inheritances over \$25,000.

SEC. 3. The foregoing rates in section 2 are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates or tax upon such excess shall be as follows:

(1) Upon all in excess of \$25,000 and up to \$50,000, two times the primary rates.

(2) Upon all in excess of \$50,000 and up to \$100,000, three times the primary rates.

(3) Upon all in excess of \$100,000 and up to \$500,000, four times the primary rates.

(4) Upon all in excess of \$500,000, five times the primary rates.

Exemptions.

SEC. 4. The following exemptions from the tax are hereby allowed:

(1) Property of the clear value of twenty thousand dollars transferred to the widow or to a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subdivision of section 2 shall be exempt.

(2) Property of the clear value of ten thousand dollars transferred to any or all of the persons described in the second subdivision of section 2 shall be exempt.

(3) Property of the clear value of five thousand dollars transferred to any or all of the persons described in the third subdivision of section 2 shall be exempt.

(4) No exemption shall be allowed upon property transferred to any of the persons described in the fourth and fifth subdivisions of section 2 of this act.

Tax, how payable.

SEC. 5. When any grant, gift, legacy, devise or succession upon which a tax is imposed by section 1 of this act shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy,

real or personal, the entire property or fund by which such estate, income or interest is supported or of which it is a part shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section 17 of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and together with the interest thereon, shall be and remain a lien on said property until the same is paid; *provided*, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax may elect not to pay the same until they shall come into the actual possession or enjoyment of such property; and in that case such person or persons or body politic or corporate shall execute a bond to the State of Nevada, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the district court having jurisdiction as hereinafter provided may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county and a certified copy thereof shall be immediately transmitted to the state controller; *provided further*, that such person shall make a full and verified return of such property to said court and file the same in the office of the county clerk within one year from the death of the decedent and within that period enter into such security and renew the same every five years.

Executor's fees liable, when.

SEC. 6. Whenever a decedent appoints or names one or more executors or trustees and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemption herein provided for shall be liable to said tax; and the district court in which the probate proceedings are pending shall fix the compensation.

Interest added, when.

SEC. 7. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months no interest shall be charged and collected thereon, but if not so paid, interest at the rate of 10 per centum per annum shall be charged and collected from the time said tax accrued; *provided*, that if said tax is paid within six months from the accruing thereof a discount of 5 per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 5 of this act for the payment of said tax, together with interest.

Penalty not chargeable, when.

SEC. 8. The penalty of 10 per centum per annum imposed by section 7 hereof, for the nonpayment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of eighteen months from the death of the decedent; and in such cases 7 per centum per annum shall be charged upon the said tax from the expiration

of said eighteen months until the cause of such delay is removed, after which 10 per centum interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

Duties of administrator.

SEC. 9. Any administrator, executor or trustee having in charge or trust any legacy or property subject to the said tax shall deduct the tax therefrom, or, if the legacy or property be not money, he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid. If, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the district court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees and for such further order relative thereto as the case may require.

Property may be sold.

SEC. 10. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of the debts of the estate, and the amount of said tax shall be paid as hereinafter directed. No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this act upon any property or interest therein or income therefrom belonging to the estate to be paid by such executor, administrator or trustee and to be settled by said account, shall have been paid, and the receipt of the county treasurer of the county in which such estate is being administered shall be the proper voucher for such payment.

Executor to pay promptly.

SEC. 11. Every sum of money retained by an executor, administrator or trustee, or paid into his hands for any tax on property, shall be paid by him within thirty days thereafter to the treasurer of the county in which the probate proceedings are pending. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor in triplicate, one copy of which he shall deliver to the person paying the said tax, and the original and one copy thereof he shall immediately send to the controller of the state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office and immediately transmit the same to the clerk of the court where the proceedings are pending. Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

Debts against estate, procedure regarding.

SEC. 12. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property from

which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer, or to the state treasurer, or by said county treasurer, or state treasurer (on warrant of the county auditor or the state controller) if it has been so paid.

Regarding transfers of interests.

SEC. 13. If a foreign executor, administrator or trustee shall assign or transfer any stock, obligations, securities, deposits or other assets in this state, standing in the name of a decedent, or in trust for a decedent, and liable to the tax hereby imposed, such tax shall be paid to the treasurer of the proper court, on the transfer of such stock, obligations, securities, deposits or other assets, and if such tax be not paid or secured to be paid at the time of such transfer, both the transferor and the transferee shall be personally liable for the amount of such tax.

District court has jurisdiction.

SEC. 14. The district court having either principal or ancillary jurisdiction of the settlement of the estate of any decedent leaving property subject to the tax hereby imposed, shall have jurisdiction to hear and determine all questions in relation to said tax, or that may arise affecting any devise, legacy or inheritance, or any grant or gift, under this act, subject to appeal as in other cases, and the state controller shall in his name of office represent the interests of the state in any such proceedings.

Appraisers appointed, when—To take oath.

SEC. 15. In each county of this state the district judge or judges shall, whenever he or they deem advisable, appoint three competent residents and freeholders of said county to act as appraisers of all property within such county, which is charged or sought to be charged with an inheritance tax. Said appraisers shall serve during the pleasure of the court and until discharged by order thereof. They shall each take the constitutional oath of the State of Nevada, but shall not be required to give a bond; they shall be subject to removal at any time in the discretion of the court, and the court, or judge thereof in vacation, may also in its discretion, either before or after the appointment of regular appraisers, appoint other appraisers to act in any given case; vacancies shall be filled by appointment of the court or by the judge thereof. Every such inheritance tax appraiser shall be paid by the county treasurer on a warrant drawn by the county auditor out of any fund which he may have in his hands not otherwise appropriated by law, on presentation of an order or certificate of the district court, showing an allowance of his claim as such appraiser. Such compensation shall be at the rate of five dollars per day for each appraiser for every day actually and necessarily employed in said inheritance tax appraisal, together with their actual and necessary traveling expenses and the fees paid such witnesses as shall have been subpoenaed before them, which fees shall be the same as those now provided for witnesses attending a court of record.

Appraiser inhibited from taking fee from legatee.

SEC. 16. Any appraiser appointed under this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, or from any agent or representative of any such person, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be punished by fine or

imprisonment or both, and in addition thereto the judge shall dismiss him from such service.

Appraisers fix market value.

SEC. 17. The district court having jurisdiction to determine any such tax, either upon its own motion or upon the application of any interested person, including the state controller or county treasurer, shall by order direct the person, or one of the persons, appointed pursuant to section 15 of this act, to fix the clear market value of property of persons whose estates shall be subject to the payment of any tax under this act. Such appraisers shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state controller and the treasurer of the county in which such tax is to be paid, and to such person or persons as the district court may by order direct, of the time when and place where they will hear all persons interested in the appraisement of such estate. At the time and place specified in such notice, the said appraisers shall meet and appraise the said property at its fair market value; and for the purpose of making said appraisement, the said appraisers shall be authorized to cause the clerk to issue subpoenas and compel the attendance of witnesses before them, to administer oaths and to take the evidence of such witnesses under oath concerning such property and the value thereof; and shall make report thereof and of such value in writing to the said district court, together with the depositions of the witnesses examined, if any, and such other facts in relation thereto as said district court may order or require, within thirty days from the date of such direction unless further time be granted by the court.

Time of appraisement may be extended.

SEC. 18. Whenever, by reason of the complicated nature of the estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the appraisers to file with the clerk of the court a full, true, and correct appraisement of the personal assets belonging to the estate within the time required by this act, the court may extend the time for making such appraisement, not exceeding a period of three months.

Objections to appraisement, how and by whom made.

SEC. 19. The state controller or any person interested in the estate appraised may, within twenty days thereafter, file objections to said appraisement, on the hearing of which as an action in equity, either party may produce evidence competent or material to the matters therein involved. If upon such hearing the court finds the amount at which the property is appraised is at its value on the market in the ordinary course of trade, and that the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, may order the appraisement amended or corrected to conform to its findings, or it shall set aside the appraisement of the property, appoint new appraisers, and so proceed until a fair and good appraisement is made. The state controller or any one interested in the property appraised may appeal to the supreme court from the order of the district court approving, amending or correcting, or setting aside any appraisement to which exceptions have been filed. Notice of appeal shall be served within thirty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in civil actions. In case of appeal, the appellant, if he is not the state controller, shall give bond to be approved by the clerk of the court, to pay the tax, which bond shall provide that the said appellant and sureties shall pay the amount of the

shall be held shall be present at the ringside and see that no brutality is shown; *and provided further*, that not more than one license shall be issued for any boxing contest in any county on the same date. *As amended, Stats. 1913, 234; 1919, 69.*

3882. Sheriff to issue license—Cost thereof.

SEC. 2. The sheriff of any county in which the exhibition or contest named in section 1 of this act is to be held, shall issue a license for such exhibition or contest upon the payment to him of the sum of one hundred dollars (\$100). *As amended, Stats. 1913, 234.*

3883. Auditor to prepare licenses.

SEC. 3. Blank licenses shall be prepared by the county auditor of the county in which the exhibition or contest named in section 1 of this act is to be held, which license shall be issued and accounted for as is by law provided for in respect to other county licenses. Each license delivered by the sheriff under the provisions of this act shall contain the name of the licensee and the name of the contestants. *As amended, Stats. 1913, 234.*

3889. Penalties for noncompliance.

SEC. 9. Any person or persons who shall participate in, conduct, or manage any glove contest or exhibition contrary to the provisions of this act, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. *As amended, Stats. 1913, 234.*

3890-3894. It was held that the act violated article 1, section 8, of the constitution of the United States relating to interstate commerce. *Ex Parte Taylor and Rounds, 35 Nev. 504, 506 (131 P. 133).*

It also violates the fourteenth amendment and article 4 of section 2 of the constitution of the United States, relating to equal protection of the laws. *Id.*

3890-5. Repealed, Stats. 1913, 55.

Stats. 1913, 106, repealed, Stats. 1915, 318.

Stats. 1913, 106, cited, *Goldfield Con. M. & T. Co. v. Old Sandstorm Co.*, 38 Nev. 436.

Const. art. 10 (as amended). requiring the legislature to provide by law for a uniform and equal rate assessment and taxation and exempt from taxation enumerated property, and Rev. Laws, 3621, 3622, declaring that all property shall be subject to taxation, except exempt property, defining real estate, and declaring that the term "personal property" shall include all capital loaned, invested, or employed in trade, commerce or business, the capital stock of corporations doing business within the state, and all property not included in the term "real estate," authorize and direct that all property of every kind, character, and nature, not specifically exempted shall be subject to taxation, and authorize a tax on the intangible property of an express company engaged in interstate and intrastate business. *State v. Wells Fargo & Co.*, 38 Nev. 505, 529 (150 P. 836).

Cited, *Wren v. Dixon*, 40 Nev. 192 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).

Stats. 1913, 121, repealed, Stats. 1915, 7.

Stats. 1913, 175, repealed, Stats. 1915, 188, and "An act in relation to public revenues, creating the Nevada tax commission and the state board of equalization," etc., Stats. 1917, 328, substituted therefor.

Stats. 1913, 175, Sec. 3. This section requires the state tax commission to hold a regular session on the second Monday in October, at which session it shall equalize property valuations as provided in section 6. Section 4 provides that the commission shall have power to exercise general supervision and control over the entire revenue system of the state, in

pursuance whereof it shall possess special powers, among others, to require assessors, sheriffs, as ex officio collectors of licenses, and the clerks of county boards of equalization, to furnish such information in relation to assessments, licenses or the equalization of valuations as it may demand. Section 6 provides that at its regular session in October it shall review the tax rolls of the various counties and may raise or lower, for the purpose of state equalization, the valuations therein. Held, that while there is no express provision requiring revenue officers of the several counties to deliver or transmit to the commission the assessment roll, where the commission determines that, for the performance of its duties, it is convenient or necessary to have such rolls and makes demand therefor, it is the duty of the county revenue officers to comply with such demand. *Nevada Tax Commission v. Douglas County*, 36 Nev. 319, 321-323 (135 P. 609).

Sec. 4. See *Nevada Tax Commission v. Douglas County*, 36 Nev. 319, under section 3.

This section does not trespass upon any inherent right of county revenue officers, their duties being within the control of the legislature. *Id.*

Sec. 6. See *Nevada Tax Commission v. Douglas County*, 36 Nev. 319, under section 3.

This act implies that the commission may fix the valuation of land lower than the minimum of \$1.25 per acre, as fixed by Rev. Laws, 3838, and an owner feeling aggrieved, on the ground that the minimum is too high, may appear before the commission and prove that the cash valuation is less than the minimum, and, on the commission's so finding, they must make a deduction in the valuation accordingly, and to this extent Rev. Laws, 3838, is superseded, but it still applies to county assessors making the original assessment. *State ex rel. C. P. R. R. v. Nevada Tax Commission*, 38 Nev. 112-116 (145 P. 905).

This act does not empower the commission to order a board of county commissioners to reduce the rate of county taxation after the commission has increased the valuation. *State ex rel. Nevada Tax Commission v. Boerlin*, 38 Nev. 39, 40-44 (144 P. 738).

Stats. 1913, 280, Sec. 15. This section, providing that the act shall in no wise affect any statute now existent nor that may hereafter be enacted providing for the licensing of automobiles for hire, does not interfere with the power of a city to license and regulate the use of jitney busses. *Parte Counts*, 39 Nev. 61, 71, 72 (153 P. 93).

Stats. 1913, 376, repealed, Stats. 1915, 247.

Stats. 1913, 423, repealed, Stats. 1915, 248.

Stats. 1915, 90, c. 74, repealed, Stats. 1919, 184.

Stats. 1915, 180, repealed by implication by Stats. 1917, 328.

Stats. 1915, 236, sec. 3. Under sec. 3, sec. 6, sec. 8, sec. 9, sec. 10 of this act it was held that half of the amount from state as well as county licenses for such disposition in quantities less than a quart is to be paid to the city, and the balance only to the county treasurer, so that such half payable to the city is not included in "all moneys received" by the county treasurer for state liquor licenses "in accordance with the provisions of this act," for which section 11 requires him to account to the state treasurer, the word "amount" in section 10 referring to the total of two sums. *State ex rel. Cole v. Hill*, 40 Nev. 110, 112-121 (160 P. 772).

Sec. 7. Similar section (Stats. 1893, 25) cited, *State ex rel. Cole v. Hill*, 40 Nev. 119 (160 P. 772).

Sec. 9. Similar section (Stats. 1893, 25) cited, *State ex rel. Cole v. Hill*, 40 Nev. 119 (160 P. 772).

An Act exempting property of veterans.

Approved March 10, 1917, 65

Exemption of property of resident army or navy veterans.

SECTION 1. The property to the amount of one thousand dollars of every

resident in this state who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war, and received an honorable discharge therefrom, and not having an income to exceed \$900 per annum, shall be exempt from taxation; *provided*, that this exemption shall not apply to any person named herein owning property of the value of three thousand dollars (\$3,000) or more. No exemption shall be made under the provisions of this act of the property of a person who is not a legal resident of this state.

An Act regulating the manner of procedure for obtaining refund of state, county and other taxes which have been twice paid, and making an appropriation therefor.

Approved March 14, 1917, 174

Providing refund of doubly paid county tax.

SECTION 1. Wherever it shall appear to a board of county commissioners in any county in this state, by competent evidence, that through mistake or inadvertence the county and school-district tax for any one tax year has, by reason of the assessment of the same piece or pieces of property to two or more persons, been paid twice or more times, said board of county commissioners, by its unanimous resolution, may direct the county treasurer to refund such excess payment to the assignee of all claims for such overpayment.

Limitation.

SEC. 2. The claim therefor must be presented to the board of county commissioners within six months after such double payment of taxes has been made.

Same for state taxes.

SEC. 3. Whenever it shall appear to the state board of examiners of the State of Nevada, by competent evidence, that through mistake or inadvertence the state tax for any one tax year has, by reason of the assessment of the same piece or pieces of property to two or more persons, been paid twice or more times, said board of examiners, by its unanimous resolution, may direct the state controller to draw his warrant for refund of such excess payment in favor of the assignee of all claims for such overpayment.

Limitation.

SEC. 4. The claim therefor must be presented to the state board of examiners within two years after such double payment of taxes has been made.

Recourse for dissatisfied claimants—County.

SEC. 5. If any person shall feel aggrieved by the action taken by any board of county commissioners on any such claim, an action may be prosecuted thereon for and on behalf of such person against said county, as on other rejected county claims.

Same—State.

SEC. 6. If any person shall feel aggrieved by the action taken by said board of examiners on any such claim, an action may be prosecuted thereon for and on behalf of said person against the State of Nevada under and pursuant to the provisions of sections 3653-3655, Revised Laws of Nevada, 1912, which are hereby made applicable to any such action.

An Act defining certain duties of county auditors, county treasurers, and the state controller, and providing penalties for the violation thereof.

Approved March 24, 1917, 344

Duties of county auditors.

SECTION 1. It is hereby made the duty of the county auditor of each and every county in this state to prepare and forward to the state controller, at the times and in the manner hereinafter prescribed, the following statements:

(a) On the first day of December of each year a statement showing separately the valuation, rates of taxation and amounts of state and county taxes levied, with the totals thereof, of all property listed on the assessment rolls of his county for that year; *provided*, that so far as the proceeds of mines roll is concerned, the term "that year" is hereby construed to mean the first three quarters of the current year and the last quarter of the preceding year.

(b) On the first day of August of each year a statement showing separately the valuation, rates of taxation, amount of taxes levied, amount collected, amount delinquent subject to redemption, amount stricken from rolls by commissioners, and amount held in trust by county treasurer, with the totals thereof, of all property listed on the assessment rolls of his county for the preceding year; the term "preceding year" being the same period of time as "that year" mentioned in subdivision (a) of this section.

(c) On the first day of December of each year a statement showing the indebtedness of such county, bonded and floating, with the amount of each class and the rate of interest borne by such indebtedness, or any part thereof; the amount of cash in the county treasury; a careful estimate of the value of all property owned by the county; the number of poll-taxes collected; and the number of registered voters.

(d) On the third Monday of June and December of each year a report, with a duplicate thereof, both of which shall be also certified by the county treasurer, showing specially the total amount collected, and the amount due the state from each particular source of revenue for the preceding six months.

(e) The county auditor in each county in the state shall, on or before the tenth day of April, July and October of each year, make a statement and report to the board of county commissioners showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury during the quarter next preceding; the funds among which the same are distributed and the amount to each; the total amount of warrants drawn and paid on what funds; the total amount of warrants drawn and unpaid; the accounts or claims audited or allowed and unpaid and the fund out of which they are to be paid; and generally making a full and specific showing of the fiscal condition of the county.

(f) On or before the tenth day of January of every year the county auditor in each county in the state shall make a similar statement and report to the board of county commissioners covering the entire year next preceding. Such report shall be printed in pamphlet form and mailed, one copy each, to each of the taxpayers named and listed on the assessment roll of the county.

Duties of county treasurers.

SEC. 2. The county treasurer of each and every county in this state shall, on the third Monday of June and December of each year, settle in full with the state controller, and send to the state treasurer all funds which

shall have come into his hands as county treasurer for the use and benefit of the state, taking therefor a receipt from the state treasurer. He shall hold himself in readiness to settle and pay all moneys in his hands belonging to the state at all other times whenever required to do so by order signed by the state controller, who is hereby authorized to draw such order whenever he deems it necessary.

Duties of state controller.

SEC. 3. The state controller shall enter upon the semiannual reports mentioned in subdivision (d) of section 1 of this act the cash paid the state treasurer and the amount of credits allowed; and the county treasurer shall thereafter file the duplicate report with the county auditor, whereupon the auditor shall balance the treasurer's account. Such further and additional statements may be required by the state controller as in his judgment he deems necessary.

An Act to provide revenue for the support of the government of the State of Nevada, to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds, to provide for the enforcement of liens created by this act, and for suits to quiet title against claims of lien arising hereunder.

Approved March 26, 1913, 411

Inheritances taxed.

SECTION 1. A tax shall be and is hereby imposed upon the transfer of any and all property within the jurisdiction of this state, and any interest therein or income therefrom, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, not hereinafter exempted, which shall pass in trust or otherwise by will or by the statutes of inheritance of this or any other state or by deed, grant, sale or gift made without valuable and adequate consideration in contemplation of the death of the grantor, vendor, assignor, or donor, or intended to take effect in possession or enjoyment at or after such death, as specified in this act. For the purposes of this act, the ownership of shares of stock in a corporation owning property in this state shall be considered as the ownership of such interest in the property so owned by such corporation, as the number of shares so owned shall bear to the entire issued and outstanding capital stock of such corporation; and notes and other evidences of indebtedness secured by mortgage on real estate situated in this state are and shall be, upon the owners' death, subject to the inheritance tax hereinafter provided.

Rates on inheritances of \$25,000 or under.

SEC. 2. When the property or any interest therein or income therefrom so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value the sum of twenty-five thousand dollars, the tax hereby imposed shall be:

(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue or lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; *provided, however*, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of 1 per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or a widow of a son, or the husband of a daughter of the decedent, at the rate of 2 per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of 3 per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of 4 per centum of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than that hereinbefore stated; or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of 5 per centum of the clear value of such interest in such property.

Rates on inheritances over \$25,000.

SEC. 3. The foregoing rates in section 2 are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates or tax upon such excess shall be as follows:

(1) Upon all in excess of \$25,000 and up to \$50,000, two times the primary rates.

(2) Upon all in excess of \$50,000 and up to \$100,000, three times the primary rates.

(3) Upon all in excess of \$100,000 and up to \$500,000, four times the primary rates.

(4) Upon all in excess of \$500,000, five times the primary rates.

Exemptions.

SEC. 4. The following exemptions from the tax are hereby allowed:

(1) Property of the clear value of twenty thousand dollars transferred to the widow or to a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subdivision of section 2 shall be exempt.

(2) Property of the clear value of ten thousand dollars transferred to any or all of the persons described in the second subdivision of section 2 shall be exempt.

(3) Property of the clear value of five thousand dollars transferred to any or all of the persons described in the third subdivision of section 2 shall be exempt.

(4) No exemption shall be allowed upon property transferred to any of the persons described in the fourth and fifth subdivisions of section 2 of this act.

Tax, how payable.

SEC. 5. When any grant, gift, legacy, devise or succession upon which a tax is imposed by section 1 of this act shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy,

real or personal, the entire property or fund by which such estate, income or interest is supported or of which it is a part shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section 17 of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and together with the interest thereon, shall be and remain a lien on said property until the same is paid; *provided*, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax may elect not to pay the same until they shall come into the actual possession or enjoyment of such property; and in that case such person or persons or body politic or corporate shall execute a bond to the State of Nevada, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the district court having jurisdiction as hereinafter provided may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county and a certified copy thereof shall be immediately transmitted to the state controller; *provided further*, that such person shall make a full and verified return of such property to said court and file the same in the office of the county clerk within one year from the death of the decedent and within that period enter into such security and renew the same every five years.

Executor's fees liable, when.

SEC. 6. Whenever a decedent appoints or names one or more executors or trustees and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemption herein provided for shall be liable to said tax; and the district court in which the probate proceedings are pending shall fix the compensation.

Interest added, when.

SEC. 7. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months no interest shall be charged and collected thereon, but if not so paid, interest at the rate of 10 per centum per annum shall be charged and collected from the time said tax accrued; *provided*, that if said tax is paid within six months from the accruing thereof a discount of 5 per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 5 of this act for the payment of said tax, together with interest.

Penalty not chargeable, when.

SEC. 8. The penalty of 10 per centum per annum imposed by section 7 hereof, for the nonpayment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of eighteen months from the death of the decedent; and in such cases 7 per centum per annum shall be charged upon the said tax from the expiration

of said eighteen months until the cause of such delay is removed, after which 10 per centum interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

Duties of administrator.

SEC. 9. Any administrator, executor or trustee having in charge or trust any legacy or property subject to the said tax shall deduct the tax therefrom, or, if the legacy or property be not money, he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid. If, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the district court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees and for such further order relative thereto as the case may require.

Property may be sold.

SEC. 10. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of the debts of the estate, and the amount of said tax shall be paid as hereinafter directed. No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this act upon any property or interest therein or income therefrom belonging to the estate to be paid by such executor, administrator or trustee and to be settled by said account, shall have been paid, and the receipt of the county treasurer of the county in which such estate is being administered shall be the proper voucher for such payment.

Executor to pay promptly.

SEC. 11. Every sum of money retained by an executor, administrator or trustee, or paid into his hands for any tax on property, shall be paid by him within thirty days thereafter to the treasurer of the county in which the probate proceedings are pending. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor in triplicate, one copy of which he shall deliver to the person paying the said tax, and the original and one copy thereof he shall immediately send to the controller of the state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office and immediately transmit the same to the clerk of the court where the proceedings are pending. Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

Debts against estate, procedure regarding.

SEC. 12. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property from

which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer, or to the state treasurer, or by said county treasurer, or state treasurer (on warrant of the county auditor or the state controller) if it has been so paid.

Regarding transfers of interests.

SEC. 13. If a foreign executor, administrator or trustee shall assign or transfer any stock, obligations, securities, deposits or other assets in this state, standing in the name of a decedent, or in trust for a decedent, and liable to the tax hereby imposed, such tax shall be paid to the treasurer of the proper court, on the transfer of such stock, obligations, securities, deposits or other assets, and if such tax be not paid or secured to be paid at the time of such transfer, both the transferor and the transferee shall be personally liable for the amount of such tax.

District court has jurisdiction.

SEC. 14. The district court having either principal or ancillary jurisdiction of the settlement of the estate of any decedent leaving property subject to the tax hereby imposed, shall have jurisdiction to hear and determine all questions in relation to said tax, or that may arise affecting any devise, legacy or inheritance, or any grant or gift, under this act, subject to appeal as in other cases, and the state controller shall in his name of office represent the interests of the state in any such proceedings.

Appraisers appointed, when—To take oath.

SEC. 15. In each county of this state the district judge or judges shall, whenever he or they deem advisable, appoint three competent residents and freeholders of said county to act as appraisers of all property within such county, which is charged or sought to be charged with an inheritance tax. Said appraisers shall serve during the pleasure of the court and until discharged by order thereof. They shall each take the constitutional oath of the State of Nevada, but shall not be required to give a bond; they shall be subject to removal at any time in the discretion of the court, and the court, or judge thereof in vacation, may also in its discretion, either before or after the appointment of regular appraisers, appoint other appraisers to act in any given case; vacancies shall be filled by appointment of the court or by the judge thereof. Every such inheritance tax appraiser shall be paid by the county treasurer on a warrant drawn by the county auditor out of any fund which he may have in his hands not otherwise appropriated by law, on presentation of an order or certificate of the district court, showing an allowance of his claim as such appraiser. Such compensation shall be at the rate of five dollars per day for each appraiser for every day actually and necessarily employed in said inheritance tax appraisal, together with their actual and necessary traveling expenses and the fees paid such witnesses as shall have been subpoenaed before them, which fees shall be the same as those now provided for witnesses attending a court of record.

Appraiser inhibited from taking fee from legatee.

SEC. 16. Any appraiser appointed under this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, or from any agent or representative of any such person, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be punished by fine or

imprisonment or both, and in addition thereto the judge shall dismiss him from such service.

Appraisers fix market value.

SEC. 17. The district court having jurisdiction to determine any such tax, either upon its own motion or upon the application of any interested person, including the state controller or county treasurer, shall by order direct the person, or one of the persons, appointed pursuant to section 15 of this act, to fix the clear market value of property of persons whose estates shall be subject to the payment of any tax under this act. Such appraisers shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state controller and the treasurer of the county in which such tax is to be paid, and to such person or persons as the district court may by order direct, of the time when and place where they will hear all persons interested in the appraisement of such estate. At the time and place specified in such notice, the said appraisers shall meet and appraise the said property at its fair market value; and for the purpose of making said appraisement, the said appraisers shall be authorized to cause the clerk to issue subpoenas and compel the attendance of witnesses before them, to administer oaths and to take the evidence of such witnesses under oath concerning such property and the value thereof; and shall make report thereof and of such value in writing to the said district court, together with the depositions of the witnesses examined, if any, and such other facts in relation thereto as said district court may order or require, within thirty days from the date of such direction unless further time be granted by the court.

Time of appraisement may be extended.

SEC. 18. Whenever, by reason of the complicated nature of the estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the appraisers to file with the clerk of the court a full, true, and correct appraisement of the personal assets belonging to the estate within the time required by this act, the court may extend the time for making such appraisement, not exceeding a period of three months.

Objections to appraisement, how and by whom made.

SEC. 19. The state controller or any person interested in the estate appraised may, within twenty days thereafter, file objections to said appraisement, on the hearing of which as an action in equity, either party may produce evidence competent or material to the matters therein involved. If upon such hearing the court finds the amount at which the property is appraised is at its value on the market in the ordinary course of trade, and that the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, may order the appraisement amended or corrected to conform to its findings, or it shall set aside the appraisement of the property, appoint new appraisers, and so proceed until a fair and good appraisement is made. The state controller or any one interested in the property appraised may appeal to the supreme court from the order of the district court approving, amending or correcting, or setting aside any appraisement to which exceptions have been filed. Notice of appeal shall be served within thirty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in civil actions. In case of appeal, the appellant, if he is not the state controller, shall give bond to be approved by the clerk of the court, to pay the tax, which bond shall provide that the said appellant and sureties shall pay the amount of the

tax for which the property may be liable with cost of appeal. If upon the hearing of objections to the appraisement, the court finds that the property is not subject to tax, the court shall, upon the expiration of time for appeal, when no appeal has been taken, order the clerk to enter on his probate docket and in the minutes of the court, a cancelation of any claim or lien for tax. If at the end of twenty days from the filing of the appraisement with the clerk, no objections are filed, the appraisement shall stand approved.

District court shall issue citation, when.

SEC. 20. If it shall appear to the district court upon petition of the state controller, or the county treasurer, or any citizen or other interested person that any transfer has been made within the meaning of this act, and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and no proceedings are pending in any court in this state wherein the taxability of such transfer, the liability therefor and the amount thereof may be determined, said court shall issue a citation, citing the persons who may appear liable therefor, or known to own any interest in or part of the property transferred, to appear before the court on a day certain, not more than twenty days from the date of such citation, and show cause why said tax should not be determined and paid. The clerk of the court shall upon the request of the state controller or the treasurer of the county furnish, without fee, one or more of transcripts of such decree or order and the same may be docketed and filed by the county clerk of any county in the state without fee. The district court may hear the said cause upon the relation of the parties and the testimony of witnesses and evidence produced in open court, and, if the court shall find said property is not subject to any tax as herein provided, the court shall, by its order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases and an appeal from such order or decree shall be allowed as provided in section 19 of this act.

Duties of court clerk.

SEC. 21. In all cases, all orders, decrees and proceedings shall be entered by the clerk of the district court in the probate register and all orders, judgments or decrees establishing liens upon property shall be docketed by the clerk as other judgment liens are docketed.

Duties of court clerk, county recorder, and district attorney.

SEC. 22. It shall be the duty of each clerk of the district court to make an examination from time to time of all reports filed with him by administrators, executors, and trustees, and also to make examination of all foreign wills offered for probate or recorded within his county, and to notify the district attorney of such county of any property coming to his knowledge subject to the tax hereby imposed. It shall be the duty of each county recorder to examine from time to time the record of deeds and conveyances filed or recorded in his office, and report to the district attorney any transfers or conveyances of property coming to his knowledge subject to the tax herein provided. It shall be the duty of the district attorney from time to time to examine the probate records and proceedings in the office of the clerk of his county, and conveyances or transfers filed in the office of the county recorder, and if from such examination or from information or knowledge coming to him from any other source, he finds or believes that any property within his county or within the jurisdiction of the district court of said county has passed by will or the intestate laws of this or any other state, or by deed, grant, sale or gift made or intended to take

effect in possession or in enjoyment after the death of the decedent, donor, or grantor, he shall make report thereof in writing to the state controller embodying in such report the name and residence of the decedent, date of death, name and address of the administrator, executor, or trustee, the description of any property liable to a tax and the county in which it is located and the name and relationship of all beneficiaries or heirs. Any citizen of the state having knowledge of property liable to such tax, against which no proceedings for enforcing the collection thereof are pending, may report the same to the district attorney of his county or the state controller and it shall be the duty of such officers to investigate the case and if such officers, or either of them, shall have reason to believe that any property is liable to the tax hereby imposed he shall forthwith institute proceedings for the recovery of the same as provided in section 20 of this act.

Costs, how chargeable.

SEC. 23. In all cases where any property so passes as to be liable to taxation under this act, all costs of the proceedings had for the determination of the amount of such tax or for determining whether the property of the entire estate is sufficient in amount to render that part passing to the heirs, devisees, legatees, grantees or transferees, subject to the tax, shall be chargeable to such estate or the owners of the property transferred and to discharge the lien upon such property, all costs as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court, and when a decision adverse to the state has been rendered with an order that the state pay the costs, it shall be the duty of the clerk of the court in which such action was pending, to certify the amount of such costs to the state treasurer, together with a copy of such judgment or order, and the state treasurer shall, if such costs be correctly certified, and the case has been finally determined, present the claim to the state board of examiners which they shall, if found correct, audit, allow and pay as other claims against the state are audited, allowed and paid.

Concerning property belonging to foreign estate.

SEC. 24. Whenever any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay an inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state; in the event that the executor, administrator or trustee of such foreign estate, files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

What tax paid to county.

SEC. 25. If a foreign administrator, executor or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of the decedent, or in trust for a decedent and liable to the tax herein provided, the tax must be paid to the county treasurer of the county in which such transfer is made before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, and it is the duty of the state controller and the district attorney of the proper county to enforce the payment thereof.

Compromise with approval of court.

SEC. 26. Whenever an estate charged, or sought to be charged, with the payment of an inheritance tax, is of such a nature or so disposed that the liability of the estate is doubtful, or the value thereon cannot with reasonable certainty be ascertained in the manner provided by this act, the state controller may with the approval of the attorney-general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estate and compound the tax, but all such settlements, compromises, and compositions shall be approved by the district court of the proper county, and after such approval the payment of the amount of the tax so agreed upon shall discharge the lien against the property of the estate. *As amended, Stats. 1919, 360.*

[Sec. 27 does not appear in enrolled bill—State Printer.]

Apportionment of moneys received.

SEC. 28. All taxes levied and collected in pursuance of the provisions of this act shall be apportioned as follows: Twenty per cent thereof shall be paid to the county treasurer of the county in which such tax is paid or collected, and shall be placed in the general fund of such county; forty per cent of such tax shall be paid to the state treasurer and placed in the state school fund; and forty per cent of such tax shall be paid to the state treasurer and placed in the general fund of the state.

District attorney to commence suit, when—Actions to quiet title.

SEC. 29. If, after the expiration of eighteen months from the accrual of any tax under this act, such tax shall remain due and unpaid, after the refusal or neglect of the persons liable therefor to pay the same, the county treasurer shall notify, or the state controller may notify, the district attorney of the county in writing of such failure or neglect, and such district attorney shall bring and prosecute an action or actions in the name of the state as plaintiff, for the recovery of such tax and for the purpose of enforcing any lien or liens against all and any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was deraigned through any such decedent by will or succession or by decree of distribution of the estate of such decedent, and any lienor, or incumbrancer subsequent to the lien of such tax may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusion, but the joinder or nonjoinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

(a) Actions may be brought against the state for the purpose of quieting the title to any property, against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes under this act. In any such action, the plaintiff may be any administrator or executor of the estate or will of any decedent, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee or devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee or successor in interest of such persons, and all or any persons who might be made parties defendant in any action brought by the state under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise

parted with all or any interest in or title to the property, or any thereof, involved in any such claim of lien before the commencement of such action. All or any of the persons in this action enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or nonjoinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

(b) All actions under this section shall be commenced in the district court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the district court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

(c) Service of summons in the actions brought against the state shall be made on the controller of state and on the district attorney of the county in which the estate of the decedent mentioned herein is being administered, or has been administered in probate proceedings, and it shall be the duty of said district attorney to defend all such actions.

(d) The procedure and practice in all actions brought under this section, except as otherwise provided in this act, shall be governed by the provisions of the civil practice act of this state, in so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals.

(e) The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section.

Words defined.

SEC. 30. The words "estate" and "property," as used in this act, shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainer, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state. The word "transfer," as used in this act, shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described. The word "decedent," as used in this act, shall include the testator, intestate, grantor, bargainer, vendor, or donor.

The words "contemplation of death," as used in this act, shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in no wise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person in making a gift causa mortis, and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of the property transferred by testate or intestate laws.

Under Rev. Laws, 2156, defining community property and Rev. Laws, 2165, providing that upon the death of the husband one-half of the community property goes to the surviving wife, the right of the wife in the community property during her husband's life is not a mere expectancy, but is a property interest, though subject to the husband's control, and at the husband's death it is merely freed from his control, and does not pass under the inheritance laws, and therefore is not subject to taxation under this act. In *Re Williams*, 40 Nev. 241, 244 (161 P. 741; L. R. A. 1917C, 602).

Deed of trust by 86-year-old invalid after enactment of this law, but shortly before law took effect, transferring stock to trustees with directions to pay income to grantor during his life, with directions as to disposition of property after his death, corresponding to provisions of will executed simultaneously with deed, was intended as disposition of property to take effect at or after grantor's death, within this law. *Cole v. Nickel*, 43 Nev. — (177 P. 410, 411, 413).

In determining whether a deed of trust immediately vested legal title so as to exempt transfer from a transfer tax under this law, the deed will be construed, together with a will executed simultaneously therewith, as a single instrument. *Id.*

Where, immediately after execution of will, testator executed deed of trust directing trustees to pay testator income during his natural life and directed disposal of property following his death by provisions corresponding to those in will, evidence that execution of deed was an afterthought to avoid, if possible, an expected increase in the tax rate in California and a probable inheritance tax of the federal government, is entitled to weight in an action to impose a transfer tax under this law. *Id.*

The "transfer tax" imposed by this law is in the nature of an excise tax, to wit, on the transfer of property. *Id.*

The rights and obligations of all parties in regard to payment of an inheritance tax under this law are determinable as of the time of the death of the decedent. *Id.*

Transfer of stock by deed of trust intended to take effect in possession or enjoyment at or after grantor's death was taxable under this law, although such law had not taken effect at the time of the execution of the deed of trust; the property having vested at the time of death and not at the date of the execution of the deed. *Id.*

An Act supplementary to an act entitled "An act to provide revenue for the support of the government of the State of Nevada, and repealing certain acts relating thereto," approved March 23, 1891.

Approved April 1, 1913, 578

Taxation of mortgages and deeds of trust.

SECTION 1. A mortgage, deed of trust, contract, or other obligation by which a debt is secured and which is a lien or incumbrance on real or personal property shall, for the purposes of assessment and taxation, be deemed, considered, and treated as an interest in said real or personal property thereby affected, except as to railroads and other quasi-public corporations, and the several assessors in their respective counties in the state shall, in assessing and fixing the value of the real or personal property affected by any such mortgage or other instrument herein mentioned, treat, consider, and deem such instrument as an interest in the real or personal property, and the assessment of the real or personal property affected thereby for the purpose of taxation shall be deemed and taken as the assessment of such mortgage or other instrument; *provided*, that in no case shall the valuation for taxation fixed exceed the value of said property. *As amended, Stats. 1915, 174.*

Either party may pay tax.

SEC. 2. All taxes so levied and assessed under the provisions of this act shall be a lien upon the property and the same may be paid by the owner thereof or the holder of any such security as they may stipulate in such mortgage or other instrument.

Tax a lien.

SEC. 3. All taxes levied and assessed under the provisions of this act shall be lien upon the property and collected as other taxes are collected. In the event any mortgage or other instrument mentioned herein shall

contain a stipulation requiring the holder thereof to pay such taxes and if such holder shall fail to make such payment, then the owner of said property shall pay such taxes and shall be entitled to a discharge of the debt thereby secured to the amount so paid.

Act not retroactive.

SEC. 4. The provisions of this act shall in no manner repeal or affect any law now in force relating to the assessment of mortgages held, or owned by any bank or trust company in this state.

An Act to provide for the assessment of patented mines, and to repeal all acts and parts of acts in conflict herewith.

Approved March 24, 1915, 316

Definition of term "Patented Mine."

SECTION 1. The term "patented mine," where hereinafter used in this act, shall be taken and deemed to mean each separate, whole, or fractional patented mining location, whether such whole or fractional mining location be covered by an independent patent or be included under a single patent with other mining locations.

Patented mines, assessment of—Exception.

SEC. 2. Each patented mine shall be assessed at not less than five hundred (\$500) dollars, except where one hundred (\$100) dollars in labor has been actually performed upon such patented mine during the calendar year for which assessment is levied or where bond and statement of intent to perform such labor has been properly filed and approved as provided in section 5 of this act, in addition to the tax on the net proceeds.

Assessor to assess patented mines.

SEC. 3. The county assessor shall assess each patented mine in his county at not less than five hundred (\$500) dollars and return the said assessment as is now required by law.

Board of equalization to strike from rolls, when.

SEC. 4. At the next succeeding session of the county board of equalization, or of any state board or commission now in existence, or that may hereafter be created by law for the purpose of equalizing property values, the owner of any such patented mine may appear before either of said boards in person or by an agent or attorney, and on presenting to either of said boards an affidavit that at least one hundred (\$100) dollars in labor has been actually performed upon said patented mine during the calendar year for which assessment is levied, the board to whom presentation is made shall strike from the roll the assessment against the patented mine named in such affidavit.

May file declaration of intent to perform labor.

SEC. 5. The owner or controller of patented mines on which one hundred (\$100) dollars in labor has not been performed at the time of the meeting of the county board, or any duly authorized state board or commission, may declare by properly executed affidavit to either of such boards his intention of performing such labor before the expiration of the then current calendar year; and upon filing such affidavit together with a good and sufficient bond in the sum of one hundred (\$100) dollars for each patented mine to which the declaration of intent is applied (which bond must be acceptable to and approved by the county board of equalization, or any duly authorized state board or commission, as the case may

real or personal, the entire property or fund by which such estate, income or interest is supported or of which it is a part shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section 17 of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and together with the interest thereon, shall be and remain a lien on said property until the same is paid; *provided*, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax may elect not to pay the same until they shall come into the actual possession or enjoyment of such property; and in that case such person or persons or body politic or corporate shall execute a bond to the State of Nevada, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the district court having jurisdiction as hereinafter provided may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county and a certified copy thereof shall be immediately transmitted to the state controller; *provided further*, that such person shall make a full and verified return of such property to said court and file the same in the office of the county clerk within one year from the death of the decedent and within that period enter into such security and renew the same every five years.

Executor's fees liable, when.

SEC. 6. Whenever a decedent appoints or names one or more executors or trustees and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemption herein provided for shall be liable to said tax; and the district court in which the probate proceedings are pending shall fix the compensation.

Interest added, when.

SEC. 7. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months no interest shall be charged and collected thereon, but if not so paid, interest at the rate of 10 per centum per annum shall be charged and collected from the time said tax accrued; *provided*, that if said tax is paid within six months from the accruing thereof a discount of 5 per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 5 of this act for the payment of said tax, together with interest.

Penalty not chargeable, when.

SEC. 8. The penalty of 10 per centum per annum imposed by section 7 hereof, for the nonpayment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of eighteen months from the death of the decedent; and in such cases 7 per centum per annum shall be charged upon the said tax from the expiration

of said eighteen months until the cause of such delay is removed, after which 10 per centum interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

Duties of administrator.

SEC. 9. Any administrator, executor or trustee having in charge or trust any legacy or property subject to the said tax shall deduct the tax therefrom, or, if the legacy or property be not money, he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid. If, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the district court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees and for such further order relative thereto as the case may require.

Property may be sold.

SEC. 10. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of the debts of the estate, and the amount of said tax shall be paid as hereinafter directed. No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this act upon any property or interest therein or income therefrom belonging to the estate to be paid by such executor, administrator or trustee and to be settled by said account, shall have been paid, and the receipt of the county treasurer of the county in which such estate is being administered shall be the proper voucher for such payment.

Executor to pay promptly.

SEC. 11. Every sum of money retained by an executor, administrator or trustee, or paid into his hands for any tax on property, shall be paid by him within thirty days thereafter to the treasurer of the county in which the probate proceedings are pending. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor in triplicate, one copy of which he shall deliver to the person paying the said tax, and the original and one copy thereof he shall immediately send to the controller of the state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office and immediately transmit the same to the clerk of the court where the proceedings are pending. Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

Debts against estate, procedure regarding.

SEC. 12. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property from

which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer, or to the state treasurer, or by said county treasurer, or state treasurer (on warrant of the county auditor or the state controller) if it has been so paid.

Regarding transfers of interests.

SEC. 13. If a foreign executor, administrator or trustee shall assign or transfer any stock, obligations, securities, deposits or other assets in this state, standing in the name of a decedent, or in trust for a decedent, and liable to the tax hereby imposed, such tax shall be paid to the treasurer of the proper court, on the transfer of such stock, obligations, securities, deposits or other assets, and if such tax be not paid or secured to be paid at the time of such transfer, both the transferrer and the transferee shall be personally liable for the amount of such tax.

District court has jurisdiction.

SEC. 14. The district court having either principal or ancillary jurisdiction of the settlement of the estate of any decedent leaving property subject to the tax hereby imposed, shall have jurisdiction to hear and determine all questions in relation to said tax, or that may arise affecting any devise, legacy or inheritance, or any grant or gift, under this act, subject to appeal as in other cases, and the state controller shall in his name of office represent the interests of the state in any such proceedings.

Appraisers appointed, when—To take oath.

SEC. 15. In each county of this state the district judge or judges shall, whenever he or they deem advisable, appoint three competent residents and freeholders of said county to act as appraisers of all property within such county, which is charged or sought to be charged with an inheritance tax. Said appraisers shall serve during the pleasure of the court and until discharged by order thereof. They shall each take the constitutional oath of the State of Nevada, but shall not be required to give a bond; they shall be subject to removal at any time in the discretion of the court, and the court, or judge thereof in vacation, may also in its discretion, either before or after the appointment of regular appraisers, appoint other appraisers to act in any given case; vacancies shall be filled by appointment of the court or by the judge thereof. Every such inheritance tax appraiser shall be paid by the county treasurer on a warrant drawn by the county auditor out of any fund which he may have in his hands not otherwise appropriated by law, on presentation of an order or certificate of the district court, showing an allowance of his claim as such appraiser. Such compensation shall be at the rate of five dollars per day for each appraiser for every day actually and necessarily employed in said inheritance tax appraisement, together with their actual and necessary traveling expenses and the fees paid such witnesses as shall have been subpoenaed before them, which fees shall be the same as those now provided for witnesses attending a court of record.

Appraiser inhibited from taking fee from legatee.

SEC. 16. Any appraiser appointed under this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, or from any agent or representative of any such person, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be punished by fine or

imprisonment or both, and in addition thereto the judge shall dismiss him from such service.

Appraisers fix market value.

SEC. 17. The district court having jurisdiction to determine any such tax, either upon its own motion or upon the application of any interested person, including the state controller or county treasurer, shall by order direct the person, or one of the persons, appointed pursuant to section 15 of this act, to fix the clear market value of property of persons whose estates shall be subject to the payment of any tax under this act. Such appraisers shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state controller and the treasurer of the county in which such tax is to be paid, and to such person or persons as the district court may by order direct, of the time when and place where they will hear all persons interested in the appraisement of such estate. At the time and place specified in such notice, the said appraisers shall meet and appraise the said property at its fair market value; and for the purpose of making said appraisement, the said appraisers shall be authorized to cause the clerk to issue subpoenas and compel the attendance of witnesses before them, to administer oaths and to take the evidence of such witnesses under oath concerning such property and the value thereof; and shall make report thereof and of such value in writing to the said district court, together with the depositions of the witnesses examined, if any, and such other facts in relation thereto as said district court may order or require, within thirty days from the date of such direction unless further time be granted by the court.

Time of appraisement may be extended.

SEC. 18. Whenever, by reason of the complicated nature of the estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the appraisers to file with the clerk of the court a full, true, and correct appraisement of the personal assets belonging to the estate within the time required by this act, the court may extend the time for making such appraisement, not exceeding a period of three months.

Objections to appraisement, how and by whom made.

SEC. 19. The state controller or any person interested in the estate appraised may, within twenty days thereafter, file objections to said appraisement, on the hearing of which as an action in equity, either party may produce evidence competent or material to the matters therein involved. If upon such hearing the court finds the amount at which the property is appraised is at its value on the market in the ordinary course of trade, and that the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, may order the appraisement amended or corrected to conform to its findings, or it shall set aside the appraisement of the property, appoint new appraisers, and so proceed until a fair and good appraisement is made. The state controller or any one interested in the property appraised may appeal to the supreme court from the order of the district court approving, amending or correcting, or setting aside any appraisement to which exceptions have been filed. Notice of appeal shall be served within thirty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in civil actions. In case of appeal, the appellant, if he is not the state controller, shall give bond to be approved by the clerk of the court, to pay the tax, which bond shall provide that the said appellant and sureties shall pay the amount of the

tax for which the property may be liable with cost of appeal. If upon the hearing of objections to the appraisalment, the court finds that the property is not subject to tax, the court shall, upon the expiration of time for appeal, when no appeal has been taken, order the clerk to enter on his probate docket and in the minutes of the court, a cancelation of any claim or lien for tax. If at the end of twenty days from the filing of the appraisalment with the clerk, no objections are filed, the appraisalment shall stand approved.

District court shall issue citation, when.

SEC. 20. If it shall appear to the district court upon petition of the state controller, or the county treasurer, or any citizen or other interested person that any transfer has been made within the meaning of this act, and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and no proceedings are pending in any court in this state wherein the taxability of such transfer, the liability therefor and the amount thereof may be determined, said court shall issue a citation, citing the persons who may appear liable therefor, or known to own any interest in or part of the property transferred, to appear before the court on a day certain, not more than twenty days from the date of such citation, and show cause why said tax should not be determined and paid. The clerk of the court shall upon the request of the state controller or the treasurer of the county furnish, without fee, one or more of transcripts of such decree or order and the same may be docketed and filed by the county clerk of any county in the state without fee. The district court may hear the said cause upon the relation of the parties and the testimony of witnesses and evidence produced in open court, and, if the court shall find said property is not subject to any tax as herein provided, the court shall, by its order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases and an appeal from such order or decree shall be allowed as provided in section 19 of this act.

Duties of court clerk.

SEC. 21. In all cases, all orders, decrees and proceedings shall be entered by the clerk of the district court in the probate register and all orders, judgments or decrees establishing liens upon property shall be docketed by the clerk as other judgment liens are docketed.

Duties of court clerk, county recorder, and district attorney.

SEC. 22. It shall be the duty of each clerk of the district court to make an examination from time to time of all reports filed with him by administrators, executors, and trustees, and also to make examination of all foreign wills offered for probate or recorded within his county, and to notify the district attorney of such county of any property coming to his knowledge subject to the tax hereby imposed. It shall be the duty of each county recorder to examine from time to time the record of deeds and conveyances filed or recorded in his office, and report to the district attorney any transfers or conveyances of property coming to his knowledge subject to the tax herein provided. It shall be the duty of the district attorney from time to time to examine the probate records and proceedings in the office of the clerk of his county, and conveyances or transfers filed in the office of the county recorder, and if from such examination or from information or knowledge coming to him from any other source, he finds or believes that any property within his county or within the jurisdiction of the district court of said county has passed by will or the intestate laws of this or any other state, or by deed, grant, sale or gift made or intended to take

effect in possession or in enjoyment after the death of the decedent, donor, or grantor, he shall make report thereof in writing to the state controller embodying in such report the name and residence of the decedent, date of death, name and address of the administrator, executor, or trustee, the description of any property liable to a tax and the county in which it is located and the name and relationship of all beneficiaries or heirs. Any citizen of the state having knowledge of property liable to such tax, against which no proceedings for enforcing the collection thereof are pending, may report the same to the district attorney of his county or the state controller and it shall be the duty of such officers to investigate the case and if such officers, or either of them, shall have reason to believe that any property is liable to the tax hereby imposed he shall forthwith institute proceedings for the recovery of the same as provided in section 20 of this act.

Costs, how chargeable.

SEC. 23. In all cases where any property so passes as to be liable to taxation under this act, all costs of the proceedings had for the determination of the amount of such tax or for determining whether the property of the entire estate is sufficient in amount to render that part passing to the heirs, devisees, legatees, grantees or transferees, subject to the tax, shall be chargeable to such estate or the owners of the property transferred and to discharge the lien upon such property, all costs as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court, and when a decision adverse to the state has been rendered with an order that the state pay the costs, it shall be the duty of the clerk of the court in which such action was pending, to certify the amount of such costs to the state treasurer, together with a copy of such judgment or order, and the state treasurer shall, if such costs be correctly certified, and the case has been finally determined, present the claim to the state board of examiners which they shall, if found correct, audit, allow and pay as other claims against the state are audited, allowed and paid.

Concerning property belonging to foreign estate.

SEC. 24. Whenever any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay an inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state; in the event that the executor, administrator or trustee of such foreign estate, files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

What tax paid to county.

SEC. 25. If a foreign administrator, executor or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of the decedent, or in trust for a decedent and liable to the tax herein provided, the tax must be paid to the county treasurer of the county in which such transfer is made before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, and it is the duty of the state controller and the district attorney of the proper county to enforce the payment thereof.

Compromise with approval of court.

SEC. 26. Whenever an estate charged, or sought to be charged, with the payment of an inheritance tax, is of such a nature or so disposed that the liability of the estate is doubtful, or the value thereon cannot with reasonable certainty be ascertained in the manner provided by this act, the state controller may with the approval of the attorney-general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estate and compound the tax, but all such settlements, compromises, and compositions shall be approved by the district court of the proper county, and after such approval the payment of the amount of the tax so agreed upon shall discharge the lien against the property of the estate. *As amended, Stats. 1919, 360.*

[Sec. 27 does not appear in enrolled bill—State Printer.]

Apportionment of moneys received.

SEC. 28. All taxes levied and collected in pursuance of the provisions of this act shall be apportioned as follows: Twenty per cent thereof shall be paid to the county treasurer of the county in which such tax is paid or collected, and shall be placed in the general fund of such county; forty per cent of such tax shall be paid to the state treasurer and placed in the state school fund; and forty per cent of such tax shall be paid to the state treasurer and placed in the general fund of the state.

District attorney to commence suit, when—Actions to quiet title.

SEC. 29. If, after the expiration of eighteen months from the accrual of any tax under this act, such tax shall remain due and unpaid, after the refusal or neglect of the persons liable therefor to pay the same, the county treasurer shall notify, or the state controller may notify, the district attorney of the county in writing of such failure or neglect, and such district attorney shall bring and prosecute an action or actions in the name of the state as plaintiff, for the recovery of such tax and for the purpose of enforcing any lien or liens against all and any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was deraigned through any such decedent by will or succession or by decree of distribution of the estate of such decedent, and any lienor, or incumbrancer subsequent to the lien of such tax may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusion, but the joinder or nonjoinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

(a) Actions may be brought against the state for the purpose of quieting the title to any property, against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes under this act. In any such action, the plaintiff may be any administrator or executor of the estate or will of any decedent, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee or devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee or successor in interest of such persons, and all or any persons who might be made parties defendant in any action brought by the state under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise

parted with all or any interest in or title to the property, or any thereof, involved in any such claim of lien before the commencement of such action. All or any of the persons in this action enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or nonjoinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

(b) All actions under this section shall be commenced in the district court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the district court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

(c) Service of summons in the actions brought against the state shall be made on the controller of state and on the district attorney of the county in which the estate of the decedent mentioned herein is being administered, or has been administered in probate proceedings, and it shall be the duty of said district attorney to defend all such actions.

(d) The procedure and practice in all actions brought under this section, except as otherwise provided in this act, shall be governed by the provisions of the civil practice act of this state, in so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals.

(e) The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section.

Words defined.

SEC. 30. The words "estate" and "property," as used in this act, shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainer, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state. The word "transfer," as used in this act, shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described. The word "decedent," as used in this act, shall include the testator, intestate, grantor, bargainer, vendor, or donor.

The words "contemplation of death," as used in this act, shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in no wise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person in making a gift causa mortis, and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of the property transferred by testate or intestate laws.

Under Rev. Laws, 2156, defining community property and Rev. Laws, 2165, providing that upon the death of the husband one-half of the community property goes to the surviving wife, the right of the wife in the community property during her husband's life is not a mere expectancy, but is a property interest, though subject to the husband's control, and at the husband's death it is merely freed from his control, and does not pass under the inheritance laws, and therefore is not subject to taxation under this act. In *Re Williams*, 40 Nev. 241, 244 (161 P. 741; L. R. A. 1917C, 602).

Deed of trust by 86-year-old invalid after enactment of this law, but shortly before law took effect, transferring stock to trustees with directions to pay income to grantor during his life, with directions as to disposition of property after his death, corresponding to provisions of will executed simultaneously with deed, was intended as disposition of property to take effect at or after grantor's death, within this law. *Cole v. Nickel*, 43 Nev.— (177 P. 410, 411, 413).

In determining whether a deed of trust immediately vested legal title so as to exempt transfer from a transfer tax under this law, the deed will be construed, together with a will executed simultaneously therewith, as a single instrument. *Id.*

Where, immediately after execution of will, testator executed deed of trust directing trustees to pay testator income during his natural life and directed disposal of property following his death by provisions corresponding to those in will, evidence that execution of deed was an afterthought to avoid, if possible, an expected increase in the tax rate in California and a probable inheritance tax of the federal government, is entitled to weight in an action to impose a transfer tax under this law. *Id.*

The "transfer tax" imposed by this law is in the nature of an excise tax, to wit, on the transfer of property. *Id.*

The rights and obligations of all parties in regard to payment of an inheritance tax under this law are determinable as of the time of the death of the decedent. *Id.*

Transfer of stock by deed of trust intended to take effect in possession or enjoyment at or after grantor's death was taxable under this law, although such law had not taken effect at the time of the execution of the deed of trust; the property having vested at the time of death and not at the date of the execution of the deed. *Id.*

An Act supplementary to an act entitled "An act to provide revenue for the support of the government of the State of Nevada, and repealing certain acts relating thereto," approved March 23, 1891.

Approved April 1, 1913, 578

Taxation of mortgages and deeds of trust.

SECTION 1. A mortgage, deed of trust, contract, or other obligation by which a debt is secured and which is a lien or incumbrance on real or personal property shall, for the purposes of assessment and taxation, be deemed, considered, and treated as an interest in said real or personal property thereby affected, except as to railroads and other quasi-public corporations, and the several assessors in their respective counties in the state shall, in assessing and fixing the value of the real or personal property affected by any such mortgage or other instrument herein mentioned, treat, consider, and deem such instrument as an interest in the real or personal property, and the assessment of the real or personal property affected thereby for the purpose of taxation shall be deemed and taken as the assessment of such mortgage or other instrument; *provided*, that in no case shall the valuation for taxation fixed exceed the value of said property. *As amended, Stats. 1915, 174.*

Either party may pay tax.

SEC. 2. All taxes so levied and assessed under the provisions of this act shall be a lien upon the property and the same may be paid by the owner thereof or the holder of any such security as they may stipulate in such mortgage or other instrument.

Tax a lien.

SEC. 3. All taxes levied and assessed under the provisions of this act shall be lien upon the property and collected as other taxes are collected. In the event any mortgage or other instrument mentioned herein shall

contain a stipulation requiring the holder thereof to pay such taxes and if such holder shall fail to make such payment, then the owner of said property shall pay such taxes and shall be entitled to a discharge of the debt thereby secured to the amount so paid.

Act not retroactive.

SEC. 4. The provisions of this act shall in no manner repeal or affect any law now in force relating to the assessment of mortgages held, or owned by any bank or trust company in this state.

An Act to provide for the assessment of patented mines, and to repeal all acts and parts of acts in conflict herewith.

Approved March 24, 1915, 316

Definition of term "Patented Mine."

SECTION 1. The term "patented mine," where hereinafter used in this act, shall be taken and deemed to mean each separate, whole, or fractional patented mining location, whether such whole or fractional mining location be covered by an independent patent or be included under a single patent with other mining locations.

Patented mines, assessment of—Exception.

SEC. 2. Each patented mine shall be assessed at not less than five hundred (\$500) dollars, except where one hundred (\$100) dollars in labor has been actually performed upon such patented mine during the calendar year for which assessment is levied or where bond and statement of intent to perform such labor has been properly filed and approved as provided in section 5 of this act, in addition to the tax on the net proceeds.

Assessor to assess patented mines.

SEC. 3. The county assessor shall assess each patented mine in his county at not less than five hundred (\$500) dollars and return the said assessment as is now required by law.

Board of equalization to strike from rolls, when.

SEC. 4. At the next succeeding session of the county board of equalization, or of any state board or commission now in existence, or that may hereafter be created by law for the purpose of equalizing property values, the owner of any such patented mine may appear before either of said boards in person or by an agent or attorney, and on presenting to either of said boards an affidavit that at least one hundred (\$100) dollars in labor has been actually performed upon said patented mine during the calendar year for which assessment is levied, the board to whom presentation is made shall strike from the roll the assessment against the patented mine named in such affidavit.

May file declaration of intent to perform labor.

SEC. 5. The owner or controller of patented mines on which one hundred (\$100) dollars in labor has not been performed at the time of the meeting of the county board, or any duly authorized state board or commission, may declare by properly executed affidavit to either of such boards his intention of performing such labor before the expiration of the then current calendar year; and upon filing such affidavit together with a good and sufficient bond in the sum of one hundred (\$100) dollars for each patented mine to which the declaration of intent is applied (which bond must be acceptable to and approved by the county board of equalization, or any duly authorized state board or commission, as the case may

One affidavit may include several properties.

SEC. 11. A single affidavit may be filed for the labor on several patented mines belonging to the same person or held in common ownership, provided all are located in the same county.

Repealing section.

SEC. 12. An act entitled "An act supplemental to an act entitled 'An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto,' approved March 23, 1891," approved March 12, 1913, and all other acts and parts of acts in conflict herewith, are hereby repealed.

An Act defining and classifying transient live stock and providing for the assessment, collection, and distribution of taxes on the same, providing penalties for violation of its provisions, and repealing all acts and parts of acts in conflict herewith.

Approved March 26, 1915, 417

Transient live stock, how determined.

SECTION 1. For the purpose of taxation, as hereinafter provided, transient stock shall be deemed to be:

1. All stock brought into the state by any person or persons, other than bona-fide residents thereof, for the purpose of being grazed or fed; and
2. All stock owned by residents of the state and driven or removed from one county to another for the purpose of being grazed or fed.

Certificate required to be filed upon bringing of live stock into any county—Form.

SEC. 2. It shall be the duty of every person or persons within ten days after bringing transient live stock into any county of the state for the purpose of being grazed or fed for any length of time, to set out in a certificate signed by such person or persons, or their agents, the number of live stock with the marks and brands on the same, and immediately file said certificate with the county clerk of the county in which said live stock shall be first brought, which certificate shall be substantially in the following form:

State of Nevada, }
County of..... } ss.

I,....., of....., hereby certify that on the..... day of....., 19....., I brought into the county of....., from the State of....., head of....., branded on the....., and marked as follows:

Dated this..... day of....., 19.....

Signed by

Duty of county clerk upon receiving certificate.

SEC. 3. It shall be the duty of the county clerk, upon said certificate being filed, to keep an index of the same in his office, and if the assessment rolls are in his possession or in the possession of the county treasurer, he shall, as clerk of the county, enter an abstract of such certificate upon the assessment roll for the current year; otherwise he shall deliver to the county assessor a certified copy of such certificate, and the county assessor shall enter an abstract of such certificate upon the assessment roll for the year.

Bond or cash deposit required.

SEC. 4. Every person or persons, bringing transient live stock into any

county of the state, for the purpose of being grazed or fed for any length of time, shall be required by the assessor of the county where certificate is filed, as provided in the two preceding sections, to also file a good and sufficient bond (which bond must be approved by the assessor) in double the sum the taxes would amount to on such live stock figured at the rate and average valuation within the county effective during the last preceding regular taxing year; *provided*, such person or persons may deposit with the assessor, taking his receipt therefor, cash in like amount in lieu of bond herein provided for. Such bond or cash shall immediately be deposited by the assessor with the county treasurer, who shall give his receipt therefor. If a bond be given, such bond shall remain in full force and effect for a period of eighteen months from date thereof as a guarantee that the provisions of sections 5 and 6 of this act shall be fully complied with; thereafter such bond shall automatically become null and void without action or surrender, unless a suit at law has been instituted to enforce the provisions of said sections 5 and 6 of this act; in which event such bond shall remain in full force and effect until a final adjudication of the suit at law by a court of competent jurisdiction, and the issue of an order from said court. Said order may be for the release of the bond or the holding it liable for taxes and costs in full or in part. If a cash deposit be made, such cash shall be retained intact by the county treasurer in a separate fund, and unapportioned until such time as the taxes for that current year shall become due, when the treasurer shall apply such portion of the cash deposit to the payment thereof as may be required, and retain the balance intact in a separate fund and unapportioned for a period of eighteen months from the date upon which original deposit was made as a guarantee that the provisions of sections 5 and 6 of this act shall be fully complied with. At the expiration of such period of eighteen months, in the event no suit at law has been instituted to enforce the provisions of sections 5 and 6 of this act, the amount remaining in the cash deposit fund shall be returned by the treasurer on the personal demand of the person or persons originally making the deposit. If suit at law has been instituted to enforce the provisions of said sections 5 and 6 of this act, the amount remaining in the cash deposit unapportioned shall be retained by the treasurer until the final adjudication of the suit at law by a court of competent jurisdiction and the issue of an order of said court. Said order may be for the release in whole or in part of the amount remaining in the cash deposit unapportioned, or the holding it liable for taxes and costs in full or in part.

Liability when removed to another county.

SEC. 5. The person or persons bringing transient live stock into any county of this state to which this act is applicable shall pay the taxes for the full calendar year on such live stock in the county where certificate is filed in accordance with section 2 of this act; *provided*, if after the filing of such certificate all or any part of the live stock covered thereby is removed to another county or other counties for any of the remaining portion of the calendar year, where the tax rate or tax rates are higher than in the county where certificate is filed, then, in such event, the bond or excess cash deposit required by the preceding section shall become liable for the amount of extra tax which would accrue by reason of such higher rate or rates, computed on the length of time the live stock shall have remained in such county or counties; *provided*, such extra tax shall become due and payable between the first and fifteenth day of January of the next succeeding calendar year; *provided further*, that if live stock coming under the provisions of this act is removed to any county or counties where the tax rates are lower than the rates in the county where

original certificate is filed, then, in that event, no refund shall be allowed by reason of such lower rates.

Idem—Procedure.

SEC. 6. In the event of removal from the county where original certificate is filed to a county or counties where higher tax rates obtain in accordance with the provisions of the preceding section, it shall be the duty of the assessor or assessors of such county or counties to make demand upon the person or persons owning or having charge of such live stock, between the first and fifteenth day of January of the next succeeding calendar year, for the amount of such extra tax, if such person or persons are then known and reasonably accessible. Immediate payment of such extra tax shall release the bond filed or cash deposit made, in accordance with the provisions of section 4 of this act, to the amount of such payment; *provided*, that if for any reason the assessor is unable to collect such extra tax between the first and fifteenth day of January, or if the person or persons owning or having in charge such live stock are not reasonably accessible, he shall immediately after the fifteenth day of January certify all the facts in detail to the district attorney. The district attorney shall within ten days thereafter institute legal proceedings against the person or persons owning or having in charge such live stock on whose behalf bond was filed or deposit made, as provided in section 4 of this act, making a party thereto the treasurer of the county where bond was filed or deposit made, and the bondsmen (if any). For the purpose of any such proceeding the treasurer of the county where bond was filed or deposit made shall be considered the agent of the owner, and service upon such treasurer shall be equivalent to service upon the owner. Such bond or deposit shall be liable for the proper amount of extra tax and all costs of action, and no part thereof shall be released without an order of court.

Not to apply to certain residents.

SEC. 7. The provisions of this act relating to the filing of a bond or making of a cash deposit shall not apply to owners of sufficient real estate within the State of Nevada to insure the payment of said taxes.

County assessor to furnish owner with certificate—Form of certificate.

SEC. 8. It shall be the duty of the county assessor in each county, at the time of assessing any transient stock, to furnish the owner of said transient stock or his agent with a certificate and such copies thereof as the owner or his agent may require, showing the time, place, number, and description of the animals assessed; *provided*, residents and other persons not owning sufficient real estate within the state to secure the payment of said taxes shall have complied with all of the necessary provisions of this act before they shall be entitled to such certificate. Such certificate shall be substantially in the following form:

State of Nevada, }
County of..... } ss.

I,....., do hereby certify that I am the assessor of
.....County, State of Nevada; that I have this day
assessed for the year 19.....,head of.....branded on the
....., and marked as follows:.....
the property of....., a resident of.....
County, State of.....

Dated this.....day of....., 19.....

By....., Deputy., Assessor.

Certificate and statement to be filed.

SEC. 9. Whenever the owner of any transient live stock or his agent shall drive or remove such live stock into another county for grazing or feeding purposes, such owner or his agent shall file with the county clerk of such county a copy of the certificate set forth in the preceding section, together with a statement from said owner or his agent showing the date when they will probably leave. Such certificate and statement must be filed in each county into which such live stock are driven or removed.

Assessor to make full assessment.

SEC. 10. If the assessment in the county where first made is not in full, then the assessor of such other county in which such transient stock may be ranging is authorized to assess such stock to the number omitted in the previous assessment, and such taxes on the number so assessed shall be paid in the county where such last assessment is made.

Applies to all live stock.

SEC. 11. The provisions of this act shall apply in cases of all transient live stock running at large or otherwise, whether in charge of a herder or not, and the taxes thereon may be collected at any time during the calendar year; and the fact that such live stock may have been assessed, and the taxes thereon for the same year paid in some other state or territory, shall not exempt it from assessment and taxation in this state; *provided*, that nothing herein contained shall be so construed as to prevent the free passage of such live stock through this state for commercial purposes, or to deny to the citizens of each state all the privileges and immunities of citizens of the several states.

Tax to be equalized, when.

SEC. 12. When the property described in this act shall have been assessed as herein provided and the taxes thereon collected as prescribed herein, upon complaint in writing by the owner, his agent, or any person aggrieved (which complaint shall be made within ten days after the collection of said taxes, and shall be filed with any state board or commission authorized by law to equalize assessment values, or with the board of county commissioners, if there be no such state board or commission), that the assessment was too high or too low, it shall be the duty of such state board or commission or board of county commissioners at its next regular session after the filing of such complaint to equalize the same, and the proceedings shall be the same as in other cases of equalization.

County commissioners to commence suit, when—Defendant in the action.

SEC. 13. It shall be the duty of the county commissioners of the county in which such live stock shall be herded or grazed without having first complied with the provisions of this act, upon receiving satisfactory information of such fact, to institute civil action in the name of the county against the person so herded or grazing such live stock, or his agent, for the proper amount of taxes due and all costs of action; and the institution or determination of such suit shall not in any wise act as a bar to the enforcement of any other penalties or forfeitures herein provided for.

Penalty for moving stock with intent to move out of state—Misdemeanor.

SEC. 14. If any person having the care or custody of such live stock shall pending an action instituted as provided in the last section, drive or move said live stock out of the county with intent to move the same out of the state, or with the intent to evade the payment of the forfeiture herein-before named, upon affidavit to that effect being made and filed in an action being brought to recover said forfeiture or tax herein provided, writs of

attachment may issue as in civil actions, and the proceedings therein shall be as in other cases, except that no undertaking on attachment shall be required; *provided*, the district attorney or other interested party may make such affidavit on information and belief. In addition to the foregoing, any person so driving or moving such live stock shall be guilty of a misdemeanor and be punished by a fine of not less than ten nor more than three hundred dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment, for each and every offense.

Failure to file certificate a misdemeanor.

SEC. 15. Any person named in section 2 of this act, or his agent, who shall bring any live stock into any county of this state for grazing or feeding purposes, and shall herd or feed or graze the same in any county of the state without filing said certificate as required herein, and without paying the amount of money or giving the bond as hereinbefore provided, shall be guilty of a misdemeanor and be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and shall further forfeit and pay the sum of forty cents for each and every head of cattle thereof, and fifteen cents for each and every head of sheep, for the use of said county, which said forfeit shall be collected by a civil action in the name of the county in which said live stock are, or were, so herded, grazed or fed.

Further punishment for violation of this act—Duties of assessors.

SEC. 16. Any person or his agent bringing live stock from one county in this state into another county for grazing purposes without filing the statement and certificate as provided in section 9 of this act, within ten days after he has crossed the county line, shall be guilty of a misdemeanor and be punished by a fine of not less than ten dollars nor more than one hundred dollars, or imprisonment in the county jail not to exceed six months; and in addition thereto said live stock shall not be exempt from taxation in the county from which they are taken. Any assessor of any county may, when he finds live stock belonging outside his county ranging within his county lines, enumerate such stock and render to the county clerk of the county where the stock belong, or the county where they were first certified to as herein required, a certificate setting forth the time that such stock entered and the time such stock left his county. A certificate so rendered shall be of the same force and effect as though made by an agent of the owner of the stock.

Punishment for failure of officers to perform duties.

SEC. 17. Any county officer or member of the board of county commissioners or board of equalization, who shall fail to perform the duties prescribed in this act, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars.

Construction of the word "person" used in this act.

SEC. 18. Within the meaning of this act the word "person" shall be construed to mean and include corporations, whether domestic or foreign, joint-stock companies, firms, or other associations associated together and doing business.

Repealing section.

SEC. 19. An act entitled "An act to provide revenue for the support of the government of the State of Nevada," approved March 13, 1895; an act entitled "An act defining and classifying transient stock and providing

for the assessment, collection, and distribution of taxes on the same, and providing penalties for violation of its provisions," approved March 9, 1903; and all other acts and parts of acts in conflict herewith, are hereby repealed.

LICENSES

An Act to provide revenue for the support of the government of the State of Nevada and to repeal all acts and parts of acts in conflict herewith.

Approved March 22, 1915, 236

Billiard, bowling alley, theater license, etc.

SECTION 1. The sheriff of each of the several counties shall be ex officio collector of licenses as provided in this act. There shall be levied and collected the following licenses:

First—For each billiard or pool table operated, if not kept for the exclusive use of the party operating the same, or his family, \$5 per quarter-year; for each ninepin or tenpin or bowling alley, \$10 per quarter-year, whether a direct charge is made for playing at such billiards, pool or bowling, or not; such licenses to be granted for each quarter or fractional quarter as hereinafter provided.

Second—For each theater, opera house, or amusement hall, during all of the time the same is being conducted for business, \$5 per day if granted for a term less than one month; if granted for one month, \$20 for the said month; if granted for one quarter-year, the sum of \$40 for said quarter-year; if granted for one year, the sum of \$75 for said year; *provided, however*, that there shall be no license fee had or collected for conducting any theater, opera house, or amusement hall in any city, or incorporated town or unincorporated town in this state in which at any time subsequent to the passage of this act less than 300 votes were polled at the then last preceding general election; and for each exhibition of circus, caravan, or menagerie, or any collection of animals for public amusement, except such as are permanently located in the public parks or zoological gardens, conducted under the auspices of a scientific society, the sum of \$20 each; and for such exhibitions or entertainments for profit or gain as are not hereinbefore enumerated, \$10 per day.

Cigarette license.

SEC. 2. Any person, firm, association, or corporation engaged in dealing, in selling, giving away, or offering to sell cigarettes or cigarette paper after the passage of this act shall take out a quarterly license therefor (or fractional quarterly license as hereinafter provided). The cost of such license shall be fifteen dollars (\$15) per quarter-year.

It shall be unlawful for any person or persons, firm, association, corporation, or managing agent of any person, firm, association, or corporation to sell, give away, or offer to sell cigarettes or cigarette paper to any person or persons under the age of twenty-one years, and any person, firm, association, or corporation, or the managing agent of any person, firm, association, or corporation violating the provisions of this section shall be guilty of a misdemeanor.

County liquor license.

SEC. 3. Any person or persons who may dispose of any spirituous, malt, or fermented liquors or wines, in less quantities than one quart, within the confines, or within one mile thereof, of any city or town shall, before the transaction of any such business, take out a county license from the sheriff of the county in which he or she proposes to do such business, and pay therefor the sum of thirty dollars per quarter-year, or proportionate amount for fractional quarter as hereinafter provided; *provided*, that all

persons engaged in retailing liquors as aforesaid, in connection with the entertainment of travelers, at any point distant one mile or more outside the limits of any city or town in this state, shall pay a quarterly license of fifteen dollars, or proportionate amount for fractional quarter as hereinafter provided; *and provided further*, that no such person or persons shall be entitled, under and by virtue of said license, to sell or cause to be sold within this state, any such spirituous, malt, or fermented liquors or wines, on any day upon which any general election is held, or within the limits of any county or city on any day upon which any special or municipal election is held therein, but it shall be expressed in each and every license so granted that the person or persons to whom the same is granted shall and will not sell, or cause to be sold, any such liquors or wines on such day or days.

Rural liquor license.

SEC. 4. Any person outside of an incorporated city or town wishing to engage in the liquor traffic in any county in the State of Nevada shall first make application by petition to the liquor board, as provided for in section 5 of this act, of the county in which he proposes to engage in the liquor business for a county liquor license of the kind and class desired, and file the same with the required liquor license fee with the county license collector, who shall present the same to said liquor board at their next regular meeting, and they may refer the petition to the sheriff, who shall report the same at the following regular meeting, and the board shall then and there grant or refuse the license prayed for; *provided*, that the sheriff may, in his discretion, grant a temporary permit to such applicant pending action of the liquor board.

Liquor board.

SEC. 5. The boards of county commissioners of their respective counties in the State of Nevada are hereby authorized, empowered, and commissioned, for the purpose of this act, to act (without further compensation) as a liquor board to grant or refuse liquor licenses, and to revoke the same whenever there is, in their judgment, sufficient reason for such revocation; *provided*, all liquor dealers within any incorporated city or town are to be regulated only by the city government thereof. A majority vote of the liquor board shall govern the granting or refusing any liquor license or the revoking of the same.

State liquor license.

SEC. 6. Every person, firm, company, or corporation manufacturing or selling, either at retail or wholesale, any spirituous, malt, or vinous liquors, shall, in addition to other licenses provided by law, take out a state liquor license as hereinafter provided, which license shall not be transferable by sale, assignment, or otherwise.

Controller to provide blank state liquor license forms.

SEC. 7. The state controller is hereby authorized and required to have printed blank licenses in sufficient quantities to supply all of the counties of this state, duly numbered and bound together in convenient form; said licenses to generally conform in words and blank lines to the following, to wit:

\$..... STATE OF NEVADA LIQUOR LICENSE No.....
County, Nevada,

....., 19....
 This certifies that..... has paid..... (\$.....)
 dollars state liquor license, which entitles him, upon the payment of
 other licenses provided by law, to carry on the business of (retailing or

wholesaling, as the case may be) spirituous, malt, and vinous liquors in _____, in the county of _____, State of Nevada, for the year ending _____, 19____, unless this or the other licenses provided by law be revoked by authority of law.

Sheriff of _____ County, Nevada.

_____, State Controller.
_____, County Auditor.

Sheriff to issue state liquor license.

SEC. 8. The sheriffs of the respective counties, as ex officio collectors of licenses, shall issue and collect all state liquor licenses, and shall, upon the payment of one hundred (\$100), issue a retail state liquor license to any person, firm, company, or corporation engaged in selling spirituous, malt, or vinous liquors in quantities less than five gallons, and the word "Retail" shall be written in red ink across the face of such license; *provided*, that retail drug stores shall not be required to pay more than twenty-five dollars per annum for such retail state liquor license when the liquors disposed of by such drug stores are for medicinal purposes only and on the prescription of a regularly licensed and practicing physician.

Wholesale state liquor license.

SEC. 9. Any person, firm, company, or corporation disposing of spirituous, malt, or vinous liquors in quantities in excess of five gallons shall be considered a wholesaler or rectifier, and shall pay a state liquor license of one hundred and fifty dollars (\$150) per annum, and the word "Wholesale" shall be written across the face of such license, in red ink.

Sheriff to pay over moneys.

SEC. 10. On the first Monday in each month the sheriff shall pay over to the county treasurer all moneys received by him for state liquor licenses in like manner and form as is hereinafter provided for the payment of county license moneys; and the duties and liabilities of the sheriff, treasurer and auditor with relation thereto shall be the same as hereinafter prescribed with relation to county licenses. The county treasurer shall, between the second and third Mondays in each month, forward to the state controller a certified detailed statement of all moneys paid to him by the sheriff in accordance with this section, which statement will show the number of each license, whether wholesale, retail, or druggists, to whom and date issued, period covered, amount of each license, and total amount received; which statement shall be furnished to the county treasurer by the sheriff and shall be the basis of the monthly settlement. In every county in this state, which now or may hereafter have duly incorporated cities, it shall be the duty of the license collector of said county to pay into the city treasury one-half of the amount of the moneys collected from the county liquor licenses, as defined by section 3 of this act, within the corporate limits of such city or cities. *As amended, Stats. 1917, 394.*

County treasurer to pay state treasurer.

SEC. 11. The county treasurer shall include in his regular semiannual settlements with the state treasurer all moneys received by him on account of state liquor licenses in accordance with the provisions of this act, and shall submit therewith a complete detailed statement of the same, furnishing the state controller with a copy thereof.

County auditor to make annual settlement with the state controller.

SEC. 12. The county auditors of the several counties shall, between the first and fifteenth days of December of each year, return to the state controller, either in person, by registered mail or express, all unused state

liquor license blanks and the properly executed stubs of all used state liquor licenses. The state controller shall immediately check the same with the remittances made by county treasurers to the state treasurer and reports of county treasurers as required by section 10 of this act. If found correct, the state controller shall issue a clearance to the county auditor and the sheriff; and the county treasurer shall be held responsible on his official bond for a proper accounting with the state treasurer under the provisions of this act.

Penal provisions.

SEC. 13. Any person, firm, company, or corporation violating any of the provisions of this act relating to state liquor licenses shall be guilty of a misdemeanor; and any sheriff of this state failing, refusing, or neglecting to collect any state liquor license, as herein provided, shall likewise be guilty of a misdemeanor.

State liquor license may be obtained for portion of year.

SEC. 14. Any person or persons applying for a state liquor license under this act shall only be required to pay a license fee for the remainder of the calendar year current when such application shall be made, apportioned at the annual rate. For the purpose of such apportionment each calendar year shall be divided into quarters, beginning on the first days of January, April, July, and October, and in making the apportionment no period less than a quarter shall be considered. Persons applying for licenses at any time during a given quarter, however short the unexpired portion of such quarter may be, shall pay for the whole quarter; and nothing herein shall be construed as to entitle the person or persons who have paid for such license to have any part of the same refunded in the event of such person or persons not continuing to sell or dispose of such liquors until the end of the calendar year in which the license is issued, nor shall it be construed as to permit the issuance of licenses to expire otherwise than with the calendar year in which issued.

Certain places of resort to pay license.

SEC. 15. Any person or persons who may conduct any hurdy-gurdy house, dance-house, or concert saloon in this state, where women or girls are either employed or attend for profit, either directly or indirectly to themselves, to dance or to solicit the purchase by persons visiting such house, either directly or indirectly, of any refreshment or cigars, or to solicit such persons so visiting to treat to any kind of drinks, refreshments or cigars, shall, before entering upon the conduct of such dance-house, hurdy-gurdy house, or concert saloon, take out a license (in addition to all other licenses required of him) from the sheriff of the county in which such person or persons propose to carry on such business, and pay therefor the sum of seventy-five dollars for each and every three months. All moneys received for licenses under the provisions of this section shall be paid three-quarters into the county treasury, and one-quarter into the state treasury, for general state and county purposes, respectively. *As amended, Stats. 1919, 262.*

Licenses for running sheep.

SEC. 16. Every citizen of the State of Nevada, who may be engaged in or who may be hereafter engaged in the business of owning, raising, grazing, herding, or pasturing sheep or cattle as owner of said sheep or cattle shall be exempt from the payment of the license hereinafter provided for, to the number of one thousand (1,000) head of sheep or five hundred (500) cattle, or five hundred cattle and sheep. Subject to the above exemption,

every person or citizen of the State of Nevada who may be engaged in or who may hereinafter be engaged in the business of owning, raising, grazing, herding or pasturing cattle or sheep as either owner, lessee or manager of said cattle or sheep in any county in the State of Nevada must annually procure a license therefor from the sheriff as collector of licenses of the said county and make payment therefor as follows, in advance, for each band, flock or bunch of sheep or herd of cattle as follows: Thirty-five cents (35c) per head for each sheep and one dollar (\$1) on each head of cattle; *provided*, that the provisions of this section shall not apply to any person, persons, firm, company, association, or corporation who owns one or more acres of lands in fee simple in the State of Nevada, for each five (5) sheep or three (3) head of cattle so owned, raised, grazed, or pastured; *and provided further*, that the lessee of lands shall not be deemed or taken as the owner and holder of lands within the meaning of this section; *and provided further*, that nothing in this section shall be construed to require the procurement of more than one license for the same sheep or cattle in the State of Nevada during the same calendar year. *As amended, Stats. 1919, 400.*

Fee for nonresident owners.

SEC. 16A. Every nonresident person, firm, partnership, association, or corporation who owns no real estate within the State of Nevada who may graze, herd, or pasture sheep within this state, as either owner, lessee, or manager of said sheep, must annually procure a license therefor, from the sheriff as collector of licenses of each county within which said sheep are grazed, herded, or pastured, and shall pay therefor the amount of 15 cents per head for each and every sheep grazed, herded or pastured within this state.

Grazing license must first be procured.

SEC. 17. Every person who shall engage in the business of raising, grazing, herding, or pasturing of any sheep, as either owner, lessee, or manager thereof, within any county of the State of Nevada without having first procured a license therefor, as prescribed by the preceding section, shall be guilty of a misdemeanor.

Duties of sheriff as to grazing license—Statement under oath—Sheriff to direct suit—District attorney to prosecute.

SEC. 18. The sheriff, as collector of licenses, of each county of the State of Nevada, shall make diligent inquiry and examination concerning all persons in his county liable to the procurement of sheep-grazing licenses under the provisions of this act, and it shall be his duty to require each such person to make a statement under oath or affirmation in writing over signature (which oath or affirmation shall be immediately filed by the sheriff with the county auditor) of the number of sheep then or about to be owned by him or them or about to be in his possession or under his control as lessee or manager thereof within such county. Thereupon such person shall procure such license from such sheriff, as collector of licenses, according to the class to which he shall be shown by the number of such sheep to belong; and in all cases wherein an underestimate of the number of sheep is made by the person procuring such license, the person making such underestimate shall be required to pay a double license for the next year. Such license when procured shall authorize the party procuring the same within the county wherein the same is procured, but in no other county, to transact business as specified in such license, and if any person required by the provisions of this act to procure a sheep-grazing license shall fail, neglect, or refuse to procure such license in the manner herein

provided, or shall engage in, or attempt to engage, in the sheep business contrary hereto without procuring such license therefor, the sheriff, as collector of licenses, shall direct the commencement of, and the district or prosecuting attorney of the county shall immediately commence, an action in the name of the State of Nevada as plaintiff against such person for the recovery of the license and all damages according to the class specified herein to which such person shall be proven to belong.

County auditors to prepare grazing licenses.

SEC. 19. The county auditors of the several counties of this state shall prepare and have printed suitable blank sheep-grazing licenses. Such licenses shall be in book form, each book to contain ten originals and ten duplicates consecutively numbered, with carbon sheets between; the auditor shall deliver such license books to the sheriff as required; *provided*, such deliveries shall result in the sheriff having no more than two of such books in his possession at any one time. The sheriff shall receipt to the auditor for all sheep-grazing license blanks received.

Fee of sheriff.

SEC. 20. The sheriff, as collector of licenses, shall demand and collect from the person procuring a sheep-grazing license a fee of two dollars for each such license sold by him, in addition to the amount paid for such license.

Sheriff to pay over to treasurer—To receive twenty per cent—Auditor to check sheriff.

SEC. 21. All moneys collected for sheep-grazing licenses, less twenty per cent (which may be retained by the sheriff as his commission for collecting the same), shall on or before the tenth day of each month be paid by the sheriff, as license collector, to the county treasurer of the county wherein such licenses are collected, and shall be by him placed to the credit of the general fund of such county. It shall be the duty of the county auditor, between the tenth and twentieth day of each month, to check the sheriff's returns to the treasurer for the preceding month, together with the unused licenses and the duplicate and canceled licenses remaining in his possession. If found correct, the auditor shall give the sheriff his clearance, which shall detail the sheep-grazing license transactions during the preceding month.

Unlawful to issue other license forms.

SEC. 22. It shall be unlawful for the sheriff to issue any other licenses for any purpose than those provided for by law.

Licenses may be revoked for cause.

SEC. 23. The boards of county commissioners of the several counties of this state are hereby empowered and authorized to revoke, withdraw, and discontinue any business license granted or issued by the sheriff or other proper officer of their respective counties, where there is reason to believe that such business is a nuisance, a menace to public health, or detrimental to the peace or morals of any community in the county in which such business may be conducted; *provided*, that such revocation, withdrawal or discontinuance of such license shall, when the action is taken on motion of or at the instance of a member of the board, be by unanimous consent of the members of such board.

Taxpayer may complain.

SEC. 24. Any resident taxpayer of any school district in the State of Nevada may file a complaint with the board of county commissioners, or with any board having control and direction of the county, city, or other

municipal government, praying against the continuance of any business which has been previously licensed by the sheriff, or any other proper officer, reciting that such business is a nuisance, a menace to the public health, or detrimental to the peace or morals of the community, and reciting such further facts as may be pertinent in the premises, said complaint to be accompanied by a petition or protest signed by not less than ten per cent of the resident freeholders of such school district, and any board of county commissioners, or other county, town, city, or municipal board, with which such complaint and petition or protest is so filed, shall, at the first meeting thereafter, or at any special meeting in the interim, thoroughly investigate the charges, and if found justifiable, instruct the sheriff, or other proper officer, to revoke, withdraw, and discontinue such license. The delivery of such complaint and petition or protest to the chairman or any member of said board, shall be considered a filing of the same sufficient to cover the provisions of this section, and the failure or refusal of such board to, within thirty days after the filing of such complaint and petition or protest, if said charges are justified, to instruct the sheriff or other proper officer to revoke, withdraw, and discontinue the license of any business so complained and petitioned or protested against, shall render each member of such board guilty of a misdemeanor.

Applicable to cities and towns.

SEC. 25. The two preceding sections are hereby made applicable to all licensing officers, town boards, and city trustees, and to the city council or board of aldermen of any incorporated city, town, or municipal government within this state.

Licenses to be posted.

SEC. 26. The sheriff of each county in the state shall, on the first Mondays of April, July, October, and January, file with the board of county commissioners, and post up in his office, a statement showing the names of all persons, firms, and corporations doing business in the county from whom licenses are collected, the nature and kind of said business, and the amount of license so paid.

Limit as to time of license.

SEC. 27. The licenses provided to be granted by the provisions of this act, except theaters, menageries, circus, glove contests, sheep-grazing and state liquor licenses, shall be granted for one, two, three, or four quarters at the option of the person applying for such licenses. The term "quarter," whenever used in this act with reference to time, shall be construed to mean one-quarter of a year, and said quarters shall begin with the months of January, April, July, and October of each and every year, and whenever any person, firm, association, or corporation shall apply for a license to conduct business in the middle of any quarter, or part of a quarter, then said person, firm, association, or corporation shall be required to pay only for the unexpired portion of the quarter, and said licenses shall be so arranged as to have said license fall and become due on the beginning of a quarter, and the sheriff and auditor shall have the right to issue a license for a fractional quarter so as to have all licenses fall due at the beginning of a quarter as herein provided.

How provided and distributed.

SEC. 28. The county auditor shall cause to be printed a sufficient number of blank licenses mentioned (except as otherwise provided for in this act) for the purposes herein mentioned. Each license shall also contain a blank receipt to be signed by the sheriff on the delivery of such license to the purchaser thereof. The county auditor shall hand over to the treasurer

of the county a sufficient number of blanks for the use of the county, which shall be charged to the treasurer on the auditor's books. The treasurer shall countersign the same and deliver them to the county auditor, taking his receipt therefor.

Auditor to furnish license—To be fully made out—Statement of sheriff.

SEC. 29. Excepting as is herein otherwise provided the auditor shall, from time to time, deliver to the sheriff as many of such licenses as may be required, and shall sign the same and charge them to the sheriff; *provided*, that before signing or delivering any license to the sheriff, the auditor shall fill out the license in full, stating therein to whom said license is issued, the kind of business authorized to be carried on under the license, the dates when said license begins and expires, and the amount of money to be paid therefor, and shall, at the same time make proper entries upon the stubs in the license book. Whenever any license is returned by the sheriff unsold, the auditor shall cancel and file the license, and note the fact and date of such return and cancelation upon the stub thereof. No board of county commissioners shall audit or allow any claim in favor of a sheriff until there shall be filed with said board the certified statement of the auditor that all settlements required by this act have been made by said sheriff. The amount of all licenses issued to the sheriff and not accounted for shall be deducted before any claim shall be allowed to a sheriff.

Sheriff to pay—Duties of auditor—Liability of sheriff.

SEC. 30. On the first Monday in each month (except as herein otherwise provided) the sheriff shall pay over to the treasurer all moneys received by him for licenses and take from the treasurer duplicate receipts therefor, and he shall immediately on the same day return to the county auditor all licenses not issued or disposed of by him, and the county auditor shall credit him with the amount so returned; also, the receipts of money paid to the county treasurer, which receipts shall be filed with the county auditor. The county auditor shall charge the treasurer therefor, and open a new account with the sheriff for the next month; and it is hereby made the duty of each sheriff in his county to demand that all persons required to procure licenses in accordance with this act, take out, and pay for the same, and he shall be held liable on his official bond for all moneys due for such licenses remaining uncollected by reason of his negligence.

Disposition of license moneys.

SEC. 31. All moneys received from licenses under the provisions of this act shall be paid into the county treasury and credited to the general county fund, except in those cases where other specific disposition is made thereof herein.

Possession of bogus license a felony.

SEC. 32. If either the county treasurer, county auditor, sheriff, or any other person, shall issue, have in his possession with intent to issue or put in circulation, any other licenses than those properly issued to the sheriff under the provisions of this act, the person so offending shall be guilty of a felony; and any collector who shall receive the money for a license without delivering to the person paying for the same the license paid for, or who shall insert the name of more than one person or firm therein, shall be guilty of a misdemeanor. *And provided*, that nothing in this act contained shall affect any provision of an act entitled "An act providing for the payment of a portion of the moneys collected for county licenses for the sale of liquors into the city treasury of incorporated cities within such county," approved February 17, 1893.

Fee of sheriff.

SEC. 33. The sheriff, as ex officio license collector, shall receive, and is hereby authorized to retain (except when he is required to turn same into the county treasury for county purposes), as compensation for the collection of licenses, excepting sheep-grazing licenses, six per cent of the gross amount on each business license sold. Twenty per cent shall be allowed for the collection of sheep-grazing licenses according to the provisions of section 21 of this act.

Insurance licenses to go to state.

SEC. 34. All amounts collected for fees and licenses under special "Acts to regulate insurance business in the state," shall be paid into the state treasury to the credit of the general insurance fund.

No compensation other than salary.

SEC. 35. For the services rendered under the provisions of this act, county assessors, auditors, and treasurers, except as specified in this act, shall receive no compensation to themselves other than the salaries fixed by law.

Penalties for violations.

SEC. 36. Whenever possible the civil practice act and the criminal practice act shall be applied in the prosecution of all violators of the provisions of this act. Any person violating any of the provisions of this act within the degree of a felony shall, on conviction thereof, be sentenced to imprisonment in the state prison for a term not less than one nor more than four years. Any person who shall violate any of the provisions of this act within the degree of a misdemeanor shall, upon conviction thereof, be punished by a fine of not less than ten nor more than three hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment; *provided*, the penalties herein prescribed shall be in excess of any money loss or expenses incurred to or by the State of Nevada, or any county, city, town, or other municipal government within the State of Nevada, due to such violations; *further provided*, that any such violation on the part of any officer of the State of Nevada, or of any county, city, town, or other municipal government within the State of Nevada, shall ipso facto work a forfeiture of and vacancy in his office, such vacancy to be filled and the appointee to qualify as provided by law when vacancy occurs from other cause. In all cases of prosecutions under this act the license collector or board of county commissioners may direct suit and the district attorney shall prosecute same. In all cases of recovery by the plaintiff fifteen dollars liquidated damages shall be included in the judgment and costs, and be collected from the defendant, and five dollars thereof shall be paid to the collector of licenses and ten dollars to the district attorney prosecuting the suit. Upon the trial of any case wherein the procurement of a proper license is in question, the defendant shall be deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of a criminal action, a recovery and payment in a civil action against him, of proper license money, damages, and costs.

Repealing section.

SEC. 37. "An act to regulate the sale of intoxicating liquors outside the corporate limits of any incorporated city or town," approved March 25, 1913;

"An act to encourage agriculture," approved March 16, 1895;

"An act defining the duties of sheriffs in relation to the filing and posting of licenses," approved March 6, 1893;

"An act supplemental to an act entitled 'An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto,' approved March 23, 1891, and to all acts amendatory thereof, and to provide for a license upon the business of owning, raising, grazing, herding, or pasturing sheep in the several counties of the State of Nevada, and to declare a violation thereof a misdemeanor, and to provide a punishment therefor," approved March 12, 1895;

"An act supplemental to an act entitled 'An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto,' approved March 23, 1891, and to all acts amendatory thereof, and to provide for a state license upon the business of disposing at retail or wholesale of spirituous, malt, or vinous liquors in this state, and providing penalties for violation hereof," approved March 15, 1905;

"An act to amend an act entitled 'An act supplemental to an act entitled 'An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto,' approved March 23, 1891, and to all acts amendatory thereof, and to provide for a state license upon the business of disposing at retail or wholesale of spirituous, malt, or vinous liquors in this state, and providing penalties for violation hereof,' approved March 15, 1905," approved March 24, 1913;

"An act empowering boards of county commissioners, town trustees, or city boards to revoke and discontinue business licenses, under certain conditions," approved March 10, 1903;

"An act licensing the sale of cigarettes and cigarette paper, and other matters pertaining thereto," approved March 1, 1897;

"An act fixing and regulating licenses on automobiles, and providing a penalty for a violation thereof," approved March 6, 1909;

"An act forbidding the collection of licenses from drummers and traveling salesmen, from manufactories, jobbers, and wholesale houses located in the State of Nevada," approved March 29, 1907;

And sections 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, and 149 of an act entitled "An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto," approved March 23, 1891; and

All other acts or parts of acts in conflict herewith, are hereby repealed.

An Act requiring traveling merchants to procure a license, fixing the amount thereof, providing penalties for violation hereof, and repealing all acts and parts of acts in conflict herewith.

Approved March 22, 1915, 252

Traveling merchant defined—Exception.

SECTION 1. The term "traveling merchant," wherever used in this act, shall be taken and deemed to mean all merchants entering into business at any place within the state for a period of less than six months; all persons vending from freight-cars standing on sidetracks, or hawkers, venders, peddlers, and traveling manufacturers, except such as are engaged in the disposal of the products of the soil, poultry, eggs, live stock, honey, or dairy products produced in Nevada or in any other state where the vender is a bona-fide producer or grower, who shall be exempt from the provisions of this act. *As amended, Stats. 1919, 183.*

License from sheriff.

SEC. 2. All traveling merchants, prior to commencing business, shall take out a license from the sheriff of the county wherein they desire to transact such business, and shall pay therefor the sum of one hundred

dollars for each month or fraction thereof. Such license shall authorize the purchaser thereof to transact the business of traveling merchant within the county designated for the time mentioned therein.

In what form issued.

SEC. 3. The sheriff shall issue such licenses, as ex officio collector of licenses on the same form used for issuance of licenses to theaters and amusements, and all the duties of the sheriff and other county officers in connection therewith shall be the same as the duties in connection with theater and amusement licenses. The penalties and procedure in case of violation hereof shall be the same as the penalties and procedure in case of violation of theater and amusement licenses.

Stats. 1913, 280, c. 206, repealed, Stats. 1915, 352, and following act, Stats. 1915, 348, substituted:

An Act regulating automobiles or motor vehicles on public roads, highways, parks, or parkways, streets and avenues, within the State of Nevada; providing a license for the operation thereof, and prescribing penalties for its violation; designating the manner of handling the receipts therefrom, and the purpose for which it may be expended, and in what manner, and repealing an act of the same title, approved March 24, 1913.

Approved March 24, 1915, 348

"Motor vehicle" defined—Proviso.

SECTION 1. Defining the term "motor vehicle": The term "motor vehicle," used in this act, shall, for the purposes of this act, unless the same be contrary to or inconsistent with the context, be construed to include all vehicles propelled by any power other than muscular power; *provided*, that nothing herein contained shall, except the provisions of section 11 of this act, apply to traction engines, road-rollers, street cars, railway motors, or railway locomotives.

Owners to file description—Fees.

SEC. 2. The owner of every automobile, motorcycle, or other similar motor vehicle shall, within ten days after the acquisition of the same, file with the secretary of state a statement of his name and address, with a brief description of the vehicle to be registered, including the name of the maker, factory number, style of vehicle, motor power and weight of such car as stated by the respective makers. Subsequent filing shall be made by each owner of a motor vehicle on or before the first Monday in February of each year. The annual filing fee shall be as follows: For every passenger car, thirty-five cents per one hundred pounds or major fraction thereof, said weight to be the factory advertised weight and in addition one hundred and twenty-five pounds for each passenger for which said vehicle is built to accommodate when loaded to capacity. For every truck, thirty-five cents per one hundred pounds of weight or major fraction thereof and in addition the body allowance weight, and in addition the rated load capacity. For every motorcycle, thirty-five cents per one hundred pounds or major fraction thereof, said weight to be factory weight and in addition one hundred and twenty-five pounds for rider; *provided*, that all motor vehicles acquired after the first day of July of any year shall be required to pay for that year one-half of the annual license fee required by this act. *As amended, Stats. 1917, 341; 1919, 298.*

Record of license plates.

SEC. 3. The secretary of state shall keep a record of all statements filed

with him in accordance with section 2 of this act, and shall also keep a record of all license plates issued by him, as provided hereinafter.

Official license.

SEC. 4. Immediately upon receipt of proper statement and remittance, the secretary of state shall issue and deliver to the owner of such automobile or motorcycle so registered an official license-number plate. The number plates shall be of a distinctly different color or shade for each year, to be designated or selected by the secretary of state, so as to make a certain color represent a certain year, and the number assigned to said motor vehicle shall be on said official number plate, and said official number plates shall be the official state licenses.

Plates must be displayed.

SEC. 5. Every motor vehicle shall also at all times have the number assigned to it displayed on the back of such vehicle in such manner as to be plainly visible, the numbers to be in Arabic numerals, light on dark background, each not less than three inches in height, and each stroke to be of a width of not less than half an inch, and also as a part of such number the abbreviated name of the state in light on dark background, such letters to be not less than one inch in height.

Regulations for sale and exchange.

SEC. 6. Upon the sale or exchange of ownership of a motor vehicle, previously registered for the year, the vendor shall immediately have this change noted on the records of the office of the secretary of state. In case the vendor wishes to retain the same number, then section 2 of this act shall govern.

Fictitious license plates unlawful.

SEC. 7. No motor vehicle shall be used or operated upon the public highways of this state after this act takes effect which shall display thereon a license plate or number belonging to another vehicle or fictitious license plate or number.

Nonresident owners exempt, proviso.

SEC. 8. Nonresident owners of motor vehicles are exempt from the provisions of this act for a period of thirty consecutive days at any time; *provided*, the owners have complied with any law requiring the registration of owners of motor vehicles in force in the state, territory, or federal district of their residence, and the registration number and initials or abbreviation of the state, territory, or federal district shall be displayed on such vehicle substantially as provided in this act.

Speed regulated—Penalty.

SEC. 9. No person shall operate a motor vehicle on a public highway at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life or limb of any person or the safety of any property. Nor shall any person incompetent to properly handle a motor vehicle nor an intoxicated person be permitted to drive the same. No person under sixteen years of age shall be permitted to drive or operate any motor vehicle in any incorporated or unincorporated city or town in this state. For a violation of this section any peace officer may arrest the driver of such motor vehicle and remove from the same the license-number plate thereof, and such number plate shall not be restored to the owner thereof except upon payment of ten dollars (\$10) in addition to the fine provided by this act. *As amended, Stats. 1917, 341.*

Motor drivers must defer to horsemen.

SEC. 10. Every person having control or charge of any motor vehicle upon any public highway and approaching any vehicle drawn by a horse or horses, or any horse upon which any person is riding, shall operate, manage, and control such motor vehicle in such manner as to exercise every reasonable precaution to prevent the frightening of any such horse or horses, and to insure the safety and protection of any person riding or driving the same. And if such horse or horses appear frightened, the person in control of such motor vehicle shall reduce its speed, and if requested by a signal or otherwise by the driver of such horse or horses, shall not proceed further toward such animal or animals unless such movement be necessary to avoid accident or injury, or until such animal or animals appear to be under the control of the driver or rider.

To be fully equipped—Provisos.

SEC. 11. Every motor vehicle while in use on a public highway shall be provided with good and efficient brakes, and also with a suitable horn or other signal. Every motor vehicle other than motorcycles must exhibit, during the period from one hour after sunset to one hour before sunrise, two lamps showing white lights, visible within a reasonable distance in the direction toward which such vehicle is proceeding, and also a red light, visible in the reverse direction; *provided*, exceptions noted in section 1 of this act are required to show only one white light in the direction toward which such vehicle is proceeding; *and provided*, every automobile equipped with and using electric light or lights upon any of the public highways of this state shall be provided and equipped with some practical and efficient device or devices whereby the forward light or lights of such vehicle may be dimmed or lessened at the will of the driver or chauffeur to such an extent that such electric light or the reflection therefrom through said forward light or lights will not interfere with the sight of nor temporarily blind the vision of the driver of an approaching vehicle; and it shall be the duty of every chauffeur or driver of such automobile equipped with and using electric lights upon the public highways of this state to effectually apply such dimmer to the forward light or lights of the vehicles being driven by him and cause such light or lights to be dimmed and lessened so as not to interfere with the sight or temporarily blind the vision of the driver of any approaching vehicle; *provided*, that any headlight that does not cast a blinding light or a beam of light over forty-two inches above the road, shall be deemed to comply with the requirements of this section; *and provided further*, exceptions also noted in section 12 of this act. *As amended, Stats. 1917, 342.*

Concerning motorcycles.

SEC. 12. Every motorcycle while in use shall carry during the period from one hour after sunset to one hour before sunrise, and whenever fog or other atmospheric conditions render the use of the highway by vehicles unusually dangerous to the traffic and use of the highway, at least one lighted lamp showing a white light, visible under normal atmospheric conditions at least two hundred feet in the direction toward which the motorcycle is proceeding, and shall also carry at the rear of such motorcycle one red light, or one red reflex mirror, plainly visible from the rear.

Rule of the road.

SEC. 13. The driver of every motor vehicle shall turn to the right in meeting other vehicles, teams, horses, and persons moving or headed in an opposite direction, and turn to the left in passing other vehicles, teams, horses, and persons moving or headed in the same direction.

Speed limit in cities and towns.

SEC. 14. The local authorities of incorporated or unincorporated cities or towns may regulate, by ordinance, rule, or regulation hereafter adopted, the speed of motor vehicles within the limits of such cities or towns, on condition that such ordinance, rule, or regulation shall also fix the same speed limitation on all other vehicles, such speed limitation not to be in any case less than one mile in five minutes; and also on further condition that such ordinance, rule, or regulation shall fix the penalties for violation thereof similar to and no greater than those fixed by such local authorities for violation of speed limitation by any vehicle other than motor vehicles.

Blanket certificate of registration.

SEC. 15. Every manufacturer of, or dealer in automobiles, motorcycles, or other similar motor vehicles, may, instead of registering each automobile, motorcycle, or other similar motor vehicle owned or controlled by him, make application upon a blank furnished by the secretary of state for a general distinguishing number, and said secretary of state shall issue to the applicant one certificate of registration, containing the name, place of business, address of the applicant, and general distinguishing number, and shall also issue and deliver to such applicant four official number plates of such design as said secretary of state shall determine.

General distinguishing number plates.

SEC. 16. All automobiles, motorcycles, or other motor vehicles owned or controlled by such manufacturer or dealer, except those for his own private use, shall, until sold or let for hire, be regarded as registered under such general distinguishing number, which must be displayed at all times upon such automobiles, motorcycles, or other motor vehicles, while being operated on public highways of this state in the manner herein provided.

Dealer punished for abuse of privilege.

SEC. 17. Any manufacturer or dealer who shall knowingly permit the use of any such number upon any automobile, motorcycle, or any similar motor vehicle owned or controlled by any other person, shall be punished by a fine of not less than ten dollars nor more than twenty-five dollars.

Dealer to notify.

SEC. 18. It shall be the duty of every manufacturer or dealer aforesaid to notify the secretary of state of any change in his address or firm name.

Fee for auto dealers.

SEC. 19. The fee for such registration, together with the four official distinguishing numbers, shall be twenty dollars for each said manufacturer or dealer. *As amended, Stats. 1919, 299.*

Duplicate numbers.

SEC. 20. Additional duplicate general distinguishing numbers may be obtained by any such manufacturer or dealer upon application to the secretary of state and the payment of an additional duplicate of not exceeding one dollar to cover the cost thereof.

Not to affect autos for hire.

SEC. 21. This act shall in no wise affect any statute now existent or that may hereafter be enacted providing for a license number on automobiles for hire.

Violations of act, misdemeanor, penalty.

SEC. 22. Excepting as in this act otherwise expressly provided, any person violating any of its provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof, unless in this act otherwise expressly

provided, shall be punishable by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days, or both, for the first offense; and punishable by fine of not less than fifty dollars nor more than one hundred dollars, or imprisonment not exceeding thirty days, or both, for a second offense; and punishable by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars, or imprisonment not exceeding thirty days, or both, for a third or subsequent offense.

Sheriff must enforce.

SEC. 23. It is hereby made the duty of the sheriff in each county in the state to enforce all provisions of this act relative to the operation of motor vehicles, and if he knowingly neglects or refuses to do so, for each offense, he shall be subject to a fine of twenty (\$20) dollars.

Fees, how disposed of.

SEC. 24. Fees received by the secretary of state, as in this act provided, shall be paid monthly to the state treasurer and placed by him in the Nevada highway bond redemption fund, as defined by law, to be used by the state treasurer in paying the interest and retiring the bonds of said fund; *provided*, that fees collected from owners of automobiles, residing in any county not included in the state highway system as defined by law, shall be paid to the treasurer of such county semiannually, to be there placed in an "Automobile and Repair Fund," to be disbursed at such times, in such amounts, and in such manner as the board of county commissioners of such county may direct. *As amended, Stats. 1917, 342; 1919, 299.*

Portion of fee retained.

SEC. 25. For the purpose of defraying actual expenses in procuring license plates and record books, and for payment of necessary postage and incidental and contingent expenses, beginning January 1, 1917, the sum of fifty (50c) cents will be deducted from the payment for each motor-vehicle license issued under this act and paid quarterly into the state treasury, to be there placed in motor-vehicle license expense fund, to be drawn upon for such expenditures as noted in this section after claims have been favorably passed upon by the board of examiners, as other state claims are acted upon; any and all moneys remaining in this fund shall be transferred to the Nevada highway bond redemption fund on the thirty-first of December of each year. *As amended, Stats. 1917, 343; 1919, 299.*

Previous act repealed.

SEC. 26. An act regulating automobiles or motor vehicles on public roads, highways, parks or parkways, streets and avenues, within the State of Nevada, providing a license for the operation thereof and prescribing penalties for its violation; designating the manner of handling the receipts therefrom and the purpose for which it may be expended and in what manner, approved March 24, 1913, is hereby repealed.

Fee for duplicate plate.

SEC. 27. For issuing duplicate license plate to an owner, the secretary of state is authorized to make an extra charge of \$1. *As amended, Stats. 1917, 343.*

Certain section of certain act repealed.

SEC. 5. Section 1 of that certain act entitled "An act to amend sections 2, 9, 11, 24, 25, and 27 of an act entitled 'An act regulating automobiles or motor vehicles on public roads, highways, parks, or parkways, streets, and avenues, within the State of Nevada; providing a license for the operation thereof, and prescribing penalties for its violation; designating the manner

of handling the receipts therefrom, and the purpose for which it may be expended, and in what manner, and repealing an act of the same title approved March 24, 1913,' approved March 24, 1915," approved March 24, 1917, is hereby repealed.

In effect, when.

SEC. 6. This act shall be in full force and effect on and after January 1, 1920. *Added, Stats. 1919, 299.*

An Act relating to the use of stamps, coupons, tickets, certificates, cards or other similar devices, for or with the sale of goods, wares and merchandise, and providing a penalty for violation thereof, and repealing all acts in conflict therewith.

Approved March 27, 1917, 420

Separate license for merchants giving.

SECTION 1. Every person, firm, or corporation who shall use, and every person, firm, or corporation who shall furnish to any other person, firm, or corporation to use, in, with, for, or about the sale of any goods, wares, or merchandise, any stamps, coupons, tickets, certificates, cards, or other similar devices, which shall entitle the purchaser receiving the same with such sale of goods, wares or merchandise to procure from any person, firm, or corporation any goods, wares, merchandise, or other article or thing of value, free of charge or for less than the retail market price thereof, upon production of any number of said stamps, coupons, tickets, certificates, cards, or other similar devices, shall, before furnishing, selling, or using the same, obtain a separate license from the auditor of each county wherein such selling or furnishing or using shall take place for each and every store or place of business in that county owned or conducted by such person, firm, or corporation from which such furnishing or selling, or in which such using, shall take place.

License.

SEC. 2. In order to obtain such license the person, firm, or corporation applying therefor shall pay to the county treasurer of the county for which such license is sought the sum of two thousand dollars, and upon such payment being made to the county treasurer he shall issue his receipt therefor, which shall be presented to the auditor of the same county who shall, upon the presentation thereof, issue to the person, firm, or corporation making such payment a license to furnish or sell, or a license to use, for one year, the stamps, coupons, tickets, certificates, cards, or other similar devices mentioned in section 1 of this act. Such license shall contain the name of the licensee thereof, the date of its issue, the date of its expiration, the town or city in which and the location at which the same shall be used, and such license shall be used at no place other than that mentioned therein.

For one firm only.

SEC. 3. No person, firm, or corporation shall furnish or sell to any other person, firm, or corporation to use in, with, for or about the sale of any goods, wares, or merchandise any such stamps, coupons, tickets, certificates, cards, or other similar devices for use in any town, city, or county in this state other than that in which such furnishing or selling shall take place.

Penalty.

SEC. 4. Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor.

An Act to regulate the herding or grazing of the live stock of certain nonresidents and of certain corporations upon unenclosed lands in the State of Nevada, and fixing a penalty for any violation of any provision of this act.

Approved April 1, 1919, at 4:40 p. m., 402

Nonresident may procure license.

SECTION 1. It shall be unlawful for any person or for any corporation who or which does not have his or its principal home ranch and livestock headquarters in the State of Nevada, except as herein provided, to herd or graze, or cause to be herded or grazed, upon any unenclosed lands in the State of Nevada, any sheep or bovine cattle without having first obtained from the sheriff of a county in which such herding or grazing, or some portion thereof is done, a valid license authorizing such herding and grazing in the State of Nevada. Such license shall be issued by said sheriff to and in the name of such person or corporation upon compliance by him or it with the provisions of section 2 of this act and shall be valid only for the calendar year in which it is dated; *provided*, that any person or any corporation which does not have its principal home ranch and livestock headquarters in the State of Nevada, owning in fee simple land in the State of Nevada, shall be exempt from any license or the payment of any license for five (5) head of sheep for each acre so owned and three (3) head of bovine cattle for each acre so owned. *As amended, Stats. 1919, 389.*

Conditions precedent to issuing.

SEC. 2. As conditions precedent to the issuance of said license, the applicant therefor shall:

1. File with said sheriff an affidavit which shall explicitly and truly state the following facts:

(a) If the applicant is a nonresident person, his name and place of residence; or, if the applicant is a corporation, its name, the state and date of its incorporation, its principal place of business, and the names and addresses of its officers.

(b) The location of his or its principal home ranch and livestock headquarters.

(c) The number of acres of land owned in fee simple in the State of Nevada, together with a description thereof.

2. Pay to said sheriff the sum of fifty cents a head for each of the sheep and the sum of two dollars a head for each of the bovine cattle proposed to be herded or grazed in the State of Nevada, after deducting the number of sheep and bovine cattle as exempt from payment of said tax. *As amended, Stats. 1919, 390.*

No larger number allowed than named.

SEC. 3. No such person or corporation shall herd, graze, or cause to be herded or grazed, upon any unenclosed land in any county in Nevada, any greater number of live stock than that for which he or it has previously obtained such license.

Sheriff to retain percentage.

SEC. 4. The sheriff collecting such license moneys shall be allowed to retain as his individual compensation and in addition to his salary or other fees, six per centum of the said license moneys by him collected and shall quarterly pay the remainder of such moneys to the county road fund.

Penalty for violation.

SEC. 5. Any person or persons violating any provisions of this act shall be deemed guilty of a misdemeanor, and if any such corporation shall herd,

graze, or cause to be herded or grazed, any live stock in violation of any provision of this act it shall be fined in any sum not less than one thousand dollars or more than ten thousand dollars, and shall be prohibited from herding, grazing, or causing to be herded or grazed, any live stock in the State of Nevada until such fine is paid.

See "An act in relation to public revenues, creating the Nevada tax commission and the state board of equalization," etc., post.

SALES OF MERCHANDISE

3908-3912. A sale of saloon and dance-hall, without complying with these sections, is prima facie void as against creditors of the seller, while the glassware, bar fixtures, and furnishings of the dance-hall and saloon are not within the description of "portion of a stock of merchandise" within the statute, and these articles are not subject to execution against the seller. *Marshon v. Toohey*, 38 Nev. 248, 251 (148 P. 357).

SALES OF PERSONAL PROPERTY

HISTORICAL INTRODUCTION TO THE UNIFORM SALES ACT

The original draft of this act was prepared in 1902-3 by Professor Samuel Williston of Cambridge, Massachusetts, at the request of the Conference of Commissioners on Uniform State Laws. The draft was printed in the summer of 1903 and sent with a request for criticism to teachers of the Law of Sales and to other experts on the subject. Some criticisms were received, and, with the light of these criticisms and his own further reflection, the draftsman presented to the Conference of Commissioners, at its meeting at St. Louis, in September, 1904, a number of suggested amendments.

The draft was then gone over carefully, section by section, by the Conference. Doubtful points and changes in wording were discussed and voted upon. The draft was then recommended to the draftsman with instructions to embody the changes adopted by the Conference and to present a revised draft at the meeting of the Conference in August, 1905.

Another draft was presented, in accordance with these instructions, at the meeting of the Conference at Narragansett Pier in August, 1905. This draft included for the first time a number of sections on the transfer of property by means of documents of title. These sections are numbered Sections 27-40 in the Act as finally adopted.

The draft was again carefully examined, and a fourth draft presented to the Conference in August, 1906, at its meeting at St. Paul, Minnesota. With such changes as were then made, the draft was finally recommended by the Conference to the several States for enactment. Up to August 1, 1919, the Uniform Sales Act had been adopted by the Legislatures of twenty-four different jurisdictions.

An Act to regulate sales of personal property, and to make uniform the law relating thereto.

Approved March 18, 1915, 194

PART I

FORMATION OF THE CONTRACT

Contracts to sell, and sales.

SECTION 1. (1) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

(2) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

(3) A contract to sell or a sale may be absolute or conditional.

(4) There may be a contract to sell or a sale between one part owner and another.

Capacity—Liabilities for necessities.

SEC. 2. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessities are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery.

FORMALITIES OF THE CONTRACT

Form of contract or sale.

SEC. 3. Subject to the provisions of this act, and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties.

Statute of frauds.

SEC. 4. (1) A contract to sell or a sale of any goods or choses in action of the value of two hundred dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(3) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods.

SUBJECT-MATTER OF CONTRACT

Existing and future goods.

SEC. 5. (1) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this act called "future goods."

(2) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods.

Undivided shares.

SEC. 6. (1) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer,

by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight, or measure of the goods in the mass and though the number, weight, or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight, or measure bought bears to the number, weight, or measure of the mass. If the mass contains less than the number, weight, or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears.

Destruction of goods sold.

SEC. 7. (1) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(2) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale—

(a) As avoided, or

(b) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible.

Destruction of goods contracted to be sold.

SEC. 8. (1) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

(2) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

(a) As avoided, or

(b) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible.

THE PRICE

Definition and ascertainment of price.

SEC. 9. (1) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2) The price may be made payable in any personal property.

(3) Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this act shall not apply.

(4) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Sale at a valuation.

SEC. 10. (1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person, without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by parts IV and V of this act.

Effect of conditions.**CONDITIONS AND WARRANTIES**

SEC. 11. (1) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first-mentioned party may also treat the nonperformance of the condition as a breach of warranty.

(2) Where the property in the goods has not passed, the buyer may treat the fulfilment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods.

Definition of express warranty.

SEC. 12. Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty.

Implied warranties of title.

SEC. 13. In a contract to sell or a sale, unless a contrary intention appears, there is—

(1) An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass;

(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

(3) An implied warranty that the goods shall be free at the time of the sale from any charge of encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made;

(4) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell, by virtue of authority in fact or law, goods in which a third person has a legal or equitable interest.

Implied warranty in sale by description.

SEC. 14. Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description, and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied warranties of quality.

SEC. 15. Subject to the provisions of this act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

(3) If the buyer has examined the goods there is no implied warranty as regards defects which such examination ought to have revealed.

(4) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6) An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith.

SALE BY SAMPLE**Implied warranties in sale by sample.**

SEC. 16. In the case of a contract to sell or a sale by sample—

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 47 (3).

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

PART II**TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER****No property passes until goods are ascertained.**

SEC. 17. Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 6.

Property in specific goods passes when parties so intend.

SEC. 18. (1) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case.

Rules for ascertaining intention.

SEC. 19. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule 1. Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

Rule 2. Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

Rule 3. (1) When goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 4. (1) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 20. This presumption is applicable, although by the terms of the contract, the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery," or their equivalents.

Rule 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon.

Reservation of right of possession or property when goods are shipped.

SEC. 20. (1) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods

shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

(4) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

Sale by auction.

SEC. 21. In the case of sale by auction—

(1) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the action has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.

Risk of loss.

SEC. 22. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a) Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations, under the contract, the goods are at the buyer's risk from the time of such delivery.

(b) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

TRANSFER OF TITLE

Sale by a person not the owner.

SEC. 23. (1) Subject to the provisions of this act, where goods are sold by a person who is not the owner thereof, and who does not sell them under

the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this act, however, shall affect—

(a) The provisions of any factor's acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b) The validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Sale by one having a voidable title.

SEC. 24. Where a seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title.

Sale by seller in possession of goods already sold.

SEC. 25. Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

Creditors' rights against sold goods in seller's possession.

SEC. 26. Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void.

Definition of negotiable documents of title.

SEC. 27. A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document, is a negotiable document of title.

Negotiation of negotiable documents by delivery.

SEC. 28. A negotiable document of title may be negotiated by delivery—

(a) Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the bearer, or

(b) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee.

Negotiation of negotiable documents by indorsement.

SEC. 29. A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer

or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank to bearer, or to another specified person. Subsequent negotiation may be made in like manner.

Negotiable documents of title marked "Not Negotiable."

SEC. 30. If a document of title which contains an undertaking by a carrier, warehouseman, or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable," or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this act. But nothing in this act contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title of placing thereon the words "not negotiable," "non-negotiable," or the like.

Transfer of non-negotiable documents.

SEC. 31. A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable document cannot be negotiated and the indorsement of such a document gives the transferee no additional right.

Who may negotiate a document.

SEC. 32. A negotiable document of title may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the document has been entrusted by the owner, if by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery.

Rights of person to whom document has been negotiated.

SEC. 33. A person to whom a negotiable document of title has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him.

Rights of person to whom document has been transferred.

SEC. 34. A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is non-negotiable such person also acquires the right to notify the bailee who issued the document of the transfer thereof and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be

defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

Transfer of negotiable document without indorsement.

SEC. 35. Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to endorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

Warranties on sale of document.

SEC. 36. A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants—

- (a) That the document is genuine;
- (b) That he has a legal right to negotiate or transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the document, and
- (d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby.

Indorser not a guarantor.

SEC. 37. The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfil their respective obligations.

When negotiations not impaired by fraud, mistake, or duress.

SEC. 38. The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake, or duress to entrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

Attachment or levy upon goods for which a negotiable document has been issued.

SEC. 39. If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court.

Creditors' remedies to reach negotiable documents.

SEC. 40. A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to

property which cannot readily be attached or levied upon by ordinary legal process.

PART III

PERFORMANCE OF THE CONTRACT

Seller must deliver, and buyer accept, goods.

SEC. 41. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale.

Delivery and payment are concurrent conditions.

SEC. 42. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Place, time, and manner of delivery.

SEC. 43. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business, if he have one, and if not, his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Delivery of wrong quantity.

SEC. 44. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell

mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between parties.

Delivery in installments.

SEC. 45. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

(2) Where there is a contract to sell goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken.

Delivery to a carrier on behalf of the buyer.

SEC. 46. (1) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 19, rule 5, or unless a contrary intent appears.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit.

Right to examine the goods.

SEC. 47. (1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination.

What constitutes acceptance.

SEC. 48. The buyer is deemed to have accepted the goods when he

intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Acceptance does not bar action for damages.

SEC. 49. In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or sale. But, if, after acceptance of the goods, the buyer fail to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know, of such breach, the seller shall not be liable thereunder.

Buyer is not bound to return goods wrongfully delivered.

SEC. 50. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them.

Buyer's liability for failing to accept delivery.

SEC. 51. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the rights against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default.

PART IV

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

Definition of unpaid seller.

SEC. 52. (1) The seller of goods is deemed to be an unpaid seller within the meaning of this act—

(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(2) In this part of this act the term "seller" includes an agent of the seller to whom the bill of lading had been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or of any other person who is in the position of a seller.

Remedies of an unpaid seller.

SEC. 53. (1) Subject to the provisions of this act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has—

(a) A lien on the goods or right to retain them for the price while he is in possession of them;

(b) In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

(c) A right of resale as limited by this act;

(d) A right to rescind the sale as limited by this act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

UNPAID SELLER'S LIEN

When right of lien may be exercised.

SEC. 54. (1) Subject to the provisions of this act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a) Where the goods have been sold without any stipulation as to credit;
(b) Where the goods have been sold on credit, but the term of credit has expired;

(c) Where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Lien after part delivery.

SEC. 55. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention.

When lien is lost.

SEC. 56. (1) The unpaid seller of goods loses his lien thereon—

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(b) When the buyer or his agent lawfully obtains possession of the goods;

(c) By waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods.

STOPPAGE IN TRANSITU

Seller may stop goods on buyer's insolvency.

SEC. 57. Subject to the provisions of this act, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.

When goods are in transit.

SEC. 58. (1) Goods are in transit within the meaning of section 57—

(a) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(b) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them even if the seller has refused to receive them back.

(2) Goods are no longer in transit within the meaning of section 57—

(a) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds

the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(c) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

(3) If the goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(4) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods.

Ways of exercising the right to stop.

SEC. 59. (1) The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2) When notice of stoppage in transitu is given by the seller to the carrier or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation.

RESALE BY THE SELLER

When and how resale may be made.

SEC. 60. (1) Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

(3) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer has been in default an unreasonable time before the resale was made.

(4) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale.

RESCISSION BY THE SELLER

When and how the seller may rescind the sale.

SEC. 61. (1) An unpaid seller having a right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted.

Effect of sale of goods subject to lien or stoppage in transitu.

SEC. 62. Subject to the provisions of this act, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu.

PART V

ACTIONS FOR BREACH OF THE CONTRACT

REMEDIES OF THE SELLER

Action for the price.

SEC. 63. (1) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3) Although the property in the goods has not passed, if they cannot readily be resold for a reasonable price, and if the provisions of section 64 (4) are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price.

Action for damages for nonacceptance of the goods.

SEC. 64. (1) Where the buyer wrongfully neglects or refuses to accept

and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(4) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfil his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing towards carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages.

When seller may rescind contract or sale.

SEC. 65. Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer.

REMEDIES OF THE BUYER

Action for converting or detaining goods.

SEC. 66. Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld.

Action for failing to deliver goods.

SEC. 67. (1) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for nondelivery.

(2) The measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Specific performance.

SEC. 68. Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just.

Remedies for breach of warranty.

SEC. 69. (1) Where there is a breach of warranty by the seller, the buyer may, at his election—

(a) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;

(b) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty;

(d) Rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2) When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4) Where the buyer is entitled to rescind the sale and elects to do so the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(5) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 53.

(6) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

Interest and special damages.

SEC. 70. Nothing in this act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VI**INTERPRETATION****Variation of implied obligations.**

SEC. 71. Where any right, duty, or liability would arise under a contract to sell or a sale by implication of law, it may be negatived or varied

by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale.

Rights may be enforced by action.

SEC. 72. Where any right, duty or liability is declared by this act, it may, unless otherwise by this act provided, be enforced by action.

Rule for cases not provided for by this act.

SEC. 73. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress, or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods.

Interpretation shall give effect to purpose of uniformity.

SEC. 74. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

Provisions not applicable to mortgages.

SEC. 75. The provisions of this act relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security.

Definitions.

SEC. 76. (1) In this act, unless the context or subject-matter otherwise requires—

“Action” includes counterclaim, set-off, and suit in equity.

“Buyer” means a person who buys or agrees to buy goods, or any legal successor in interest of such person.

“Defendant” includes a plaintiff against whom a right of set-off or counterclaim is asserted.

“Delivery” means voluntary transfer of possession from one person to another.

“Divisible contract to sell or sale” means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

“Document of title to goods” includes any bill of lading, dock warrant, warehouse receipt, or order for the delivery of goods, or any other document used in the ordinary course of business, in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document.

“Fault” means wrongful act or default.

“Fungible goods” means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale.

“Goods” include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

“Order” in sections of this act relating to documents of title means an order by indorsement on the document.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

"Plaintiff" includes defendant asserting a right of set-off or counterclaim.

"Property" means the general property in goods, and not merely a special property.

"Purchaser" includes mortgagee and pledgee.

"Purchases" includes taking as a mortgagee or as a pledgee.

"Quality of goods" includes their state or condition.

"Sale" includes a bargain and sale as well as a sale and delivery.

"Seller" means a person who sells or agrees to sell goods, or any legal successor in the interest of such person.

"Specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting claim, whether for money or not, constitutes value where goods or documents of titles are taken either in satisfaction thereof or as security therefor.

(2) A thing is done in "good faith" within the meaning of this act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is "insolvent" within the meaning of this act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

(4) Goods are in a "deliverable state" within the meaning of this act when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.

Act does not apply to existing sales or contracts to sell.

SEC. 76A. None of the provisions of this act shall apply to any sale, or to any contract to sell, made prior to the taking effect of this act.

No repeal of uniform warehouse receipt act or certain other named acts.

SEC. 76B. Nothing in this act or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the act to make uniform the law of warehouse receipts, or what is known as the bulk sales act, being sections 3908 to 3912, inclusive, of the Revised Laws of Nevada, or the law relating to the mortgage of personal property.

Inconsistent legislation repealed.

SEC. 77. All acts or parts of acts inconsistent with this act are hereby repealed, except as provided in section 76b.

Time when the act takes effect.

SEC. 78. This act shall take effect on the first day of April, one thousand nine hundred and fifteen.

Name of act.

SEC. 79. This act may be cited as the Uniform Sales Act.

SCHOOLS OF MINES

Stats. 1915, 190, c. 155, repealed, Stats. 1919, 162.

Stats. 1917, 231, c. 132, repealed, Stats. 1919, 162, and following act substituted:

An Act creating schools of mines in Virginia City, Tonopah, Goldfield, and in the Ely mining district, Nevada; providing for the control of said schools and making appropriations therefor.

Approved March 25, 1919, 160

Schools in cities.

SECTION 1. There is hereby created the Virginia City school of mines, the Tonopah school of mines, the Goldfield school of mines, and the Ely mining district school of mines; the first to be located in the town of Virginia City, Nevada; the second in the town of Tonopah, Nevada; the third in the town of Goldfield, Nevada, and the fourth in White Pine County at a place or places to be designated by the county board of education of said county.

Under whose direction.

SEC. 2. Each of the aforesaid mining schools, on and after July 1, 1919, shall be conducted under the direction of the county board of education where such exists, or under the district high-school board in the absence of a county board of education, in cooperation with the Nevada state board for vocational education.

The Virginia City school of mines, the Tonopah school of mines and the Goldfield school of mines shall be conducted under the direction of the district boards of school trustees in the respective school districts in which such schools are located. The Ely mining district school shall be conducted under the direction of the county board of education of White Pine County, each of these boards cooperating, as provided by law and regulation with the state board for vocational education.

Appropriations for support.

SEC. 3. For the support of the said schools in the years 1919 and 1920 the state board for vocational education is hereby directed to apportion from the appropriation made or which hereafter may be made for the support of cooperative vocational training under the provisions of the federal vocational education act, known as the Smith-Hughes act, and of chapter 209, Statutes of Nevada 1917, accepting the benefits of said act and all subsequent acts relating thereto: To the Virginia City school of mines, the sum of twenty-four hundred dollars (\$2,400); to the Tonopah school of mines, the sum of four thousand and fifty dollars (\$4,050); to the Goldfield school of mines, the sum of four thousand and fifty dollars (\$4,050); to the Ely mining district school of mines, the sum of four thousand and fifty dollars (\$4,050); which shall be paid for the salaries of teachers and for necessary operating expenses of the said schools.

Appropriation for support.

SEC. 4. For the support of the said schools of mines from January 1, 1919, to July 1, 1919, there is appropriated in the manner hereinafter specified and from any moneys in the general fund of the state treasury not otherwise appropriated, the following sums: For the support of the Virginia City school of mines (including the salary of the principal), the

sum of thirteen hundred dollars (\$1,300) ; for the support of the Tonopah school of mines (including the salary of the principal), the sum of nineteen hundred and fifty dollars (\$1,950) ; for the support of the Goldfield school of mines (including the salary of the principal), the sum of nineteen hundred and fifty dollars; for the support of the Ely mining district school of mines (including the salary of the principal), the sum of nineteen hundred and fifty dollars; *provided, however*, that all salaries and expenses incurred up to and including the date of the passage and approval of this act, which shall have been paid from funds appropriated heretofore for the support of each and any of the said schools, shall be deemed to be a part of and not an addition to appropriations heretofore made and available for the support of such school.

County tax.

SEC. 5. On and after January 1, 1921, the said mining schools shall be maintained as local, state and federal cooperative enterprises in which one-fourth of the cost of the salaries of said schools shall be borne by the respective counties wherein said schools are situated and three-fourths of the said cost shall be borne by the state and by the federal governments under the terms of the Smith-Hughes vocational education act and the state act or acts accepting the benefits of the same.

The respective boards of county commissioners in the counties in which said schools are located shall in preparing budgets on estimated expenditures for the years 1921 and thereafter provide in the tax levies of the preceding year for sufficient moneys to permit of county cooperation in the support of the said schools as aforesaid, and any county failing to make such provision shall forfeit the right to state and federal moneys for the support of the mining schools situated therein and the right to receive moneys from the state vocational fund.

Transfer of school equipment.

SEC. 6. On or before July 1, 1919, all equipment, property and assets in the possession of the Virginia City school of mines, the Tonopah school of mines, the Goldfield school of mines, and the Ely mining district school of mines shall be transferred by the state board for vocational education and by the boards now having direct control of the said equipment, property and assets, to the county boards of education or district boards of school trustees of the respective school districts in which said schools may be respectively located, for the exclusive use of said mining schools in said districts as long as said schools may be operated.

Repeal of certain acts.

SEC. 7. Those certain acts entitled "An act amending an act entitled 'An act creating a school of mines to be located at Virginia City, Nevada,' approved March 20, 1903," approved March 20, 1911, being section 4671, Revised Laws of Nevada, 1912; an act entitled "An act creating a school of mines to be located at Tonopah, Nevada," approved March 17, 1915, and an act entitled "An act creating a school of mines to be located at Goldfield, Nevada, and a school of mines to be located at Ely, Nevada," approved March 20, 1917, are hereby repealed.

STATE AGRICULTURAL SOCIETY

3925. Fair to be held at Fallon.

SEC. 5. The state board of agriculture shall be charged with the exclusive management and control of the state agricultural society as a state institution; shall have possession and care of its property, and be intrusted with the direction of its entire business and financial affairs. They shall define the duties of the secretary and treasurer, fix their bonds and compensation, and shall have power to make all necessary changes in the constitution and rules of the society to adapt the same to the provisions of this act, and to the management of the society, its meetings and exhibitions. They shall provide for an annual fair or exhibition by the society of all the industries and industrial products of the state at the city of Fallon, Churchill County, State of Nevada; *provided*, that in no event shall the state be liable for any premium awarded or debt created by said board of agriculture. *As amended, Stats. 1915, 26.*

STATE BUDGET

An Act providing for a state budget.

Approved March 10, 1919, 58

Duties of governor and legislature—Appropriations limited.

SECTION 1. Within twenty days after the convening of the state legislature the governor shall submit a budget for the two ensuing fiscal years. Said budget shall contain a complete plan of proposed expenditures and estimated revenues for the ensuing biennium. Accompanying said budget shall be a statement showing the revenues and expenditures for the two fiscal years next preceding; the current assets, liabilities, reserves, and surplus or deficit of the state; the debts and funds of the state; an estimate of the state's financial condition as of the beginning and end of the biennium covered by the budget; and any explanation the governor may desire to make as to the important features of the budget and any suggestions as to methods for the reduction or increase of the state's revenue.

Said budget shall embrace an itemized estimate of the appropriations for the state legislature as certified to the governor by the president of the senate and the speaker of the assembly; for the executive department; for the judiciary department; to pay and discharge the principal and interest of the debt of the State of Nevada; for the salaries payable by the state under the constitution and laws of the state; and for such other purposes as are set forth in the constitution and laws of the state; and for all other appropriations.

The governor shall deliver to the presiding officer of each house the budget, and a bill for all the proposed appropriations of the budget, clearly itemized and classified; and the presiding officer of each house shall promptly cause said bill to be introduced therein. The governor may, before final action thereon by the state legislature, amend or supplement the budget to correct an oversight, or in case of an emergency, with the consent of the state legislature, by delivering such amendment or supplement to the presiding officers of both houses; and such amendment or

supplement shall thereby become a part of said budget bill as an addition to the items in said bill or as a modification of or substitute for any item in said bill such amendment or supplement may affect.

The state legislature may not alter said bill except to strike out or reduce items therein; *provided, however*, appropriations necessary for the payment of interest or principal due on the public debt shall not be reduced or eliminated; *and provided further*, that the salary or compensation of any public officer shall not be increased or decreased during his term of office.

Neither house shall consider any other appropriation, except an emergency appropriation for the immediate expense of the state legislature, until the budget has been finally acted upon by both houses. Every appropriation in addition to that provided for in the budget shall be embodied in a separate act and shall be limited to some single work, object or purpose therein stated. No supplementary appropriation shall be valid if it exceeds the amount in the state treasury available for such appropriation, unless the legislature making such appropriation shall provide the necessary revenue to pay such appropriation by a tax, direct or indirect, to be laid and collected as shall be directed by the state legislature; *provided*, that such tax shall not exceed the rates permitted under the constitution of Nevada. This provision shall not apply to appropriations to suppress insurrections, defend the state, or assist in defending the United States in time of war.

The governor, for the purpose of making up said budget, shall have the power, and it shall be his duty, to require from the proper state officials, including all heads of executive and administrative departments and state institutions, bureaus, boards, commissions, and agencies expending or supervising the expenditures of state moneys and all institutions applying for state moneys and appropriations, such itemized estimates and other information in such form and at such times as he may direct. The estimate for the legislative department, as certified by the presiding officers of both houses, shall be included in the budget without revision by the governor.

The governor may provide for hearings on all estimates and may require the attendance at such hearings of representatives of state departments and institutions and of other institutions or individuals applying for state appropriations.

The governor may in his discretion revise all estimates, except those relating to the legislative department, those providing for the payment of the principal and interest of the state debt, and for the salaries and expenditures specified by the constitution and laws of the state.

The total appropriations made and expenditures authorized by the budget must not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing biennium, which estimate shall be furnished the governor by the state auditor at least six months prior to the convening of the state legislature in regular session.

If any item in the budget as enacted shall be held invalid upon any ground, such invalidity shall not affect the budget itself or any other item in it.

Providing, however, that no act appropriating money passed by the twenty-ninth session of the legislature shall be affected by this repeal.

STATE FLAG

An Act creating an official flag for the State of Nevada, and prescribing the words, letters, and devices to be contained thereon, and repealing all other acts in relation thereto.

Approved March 22, 1915, 251

Specifications for official flag.

SECTION 1. The official flag of the State of Nevada is hereby created, to be designed of the following colors, with the following lettering and devices thereon, to wit: The body of the flag shall be of solid blue. On the blue field, and in the center thereof, shall be placed the great seal of the State of Nevada, as the same is designed and created by section 4402, Revised Laws, 1912; the design of said seal to be in scroll border, and the words "The Great Seal of the State of Nevada" to be omitted. Immediately above the seal shall be the words "Nevada," in silver-colored block Roman capital letters. Immediately below the seal, and in the form of a scroll, shall be the words "All For Our Country," in gold-colored block Roman capital letters. Above the word "Nevada" there shall be placed a row of eighteen gold-colored stars, and below the words "All For Our Country" there shall be placed a row of eighteen silver-colored stars. Each star shall have five points, and shall be placed with one point up.

Repeal.

SEC. 2. That certain act entitled "An act adopting the design of the flag of the State of Nevada," approved March 25, 1905, and all other acts and parts of acts in conflict herewith, are hereby repealed.

STATE INSTITUTIONS

An Act in relation to the sale of articles and products of state institutions not required for their own use and consumption.

Approved March 22, 1913, 265

State institution may sell products.

SECTION 1. The products of any state institution, or any article, not required for its own use or consumption, may be sold by the official in charge of such institution at its reasonable market value, and the proceeds of such sale shall be deposited in the fund or appropriation for the support of such institution, and not in the general fund.

To receive credit.

SEC. 2. In the event that any state institution disposes of any of its products, or any article not required by it, to any other state institution, said state institution so selling the same shall present a claim for the selling price agreed against the institution purchasing the same, which shall be certified to by the proper officer of said purchasing institution, and on approval by the state board of examiners the state controller shall draw his warrant in favor of the fund or appropriation for the support of said selling institution; and the official in charge of said selling institution is hereby authorized to receipt for such warrant, and on its presentation the state treasurer shall transfer the amount of such warrant to such fund or appropriation, and not to the general fund.

STATE LIBRARY

3947. State library commission—Librarian to give bond—Assistant—Salaries—Rules and regulations.

SEC. 2. The state library shall be under the control of a commission to be known as the state library commission, which shall consist of the chief justice and the associate justices of the supreme court. The said state library commission shall appoint a state librarian, who shall hold office at the pleasure of the commission. The state librarian shall qualify according to law, and give a bond to the State of Nevada for the faithful performance of his duties in the sum of five thousand dollars. The state librarian shall be paid a salary of two thousand four hundred dollars per annum, payable in equal monthly installments, as other state officers are paid. The state librarian shall appoint an assistant, who shall be approved by the state library commission, and shall receive a salary of fifteen hundred dollars per annum, payable in equal monthly installments as other state officers are paid. The state librarian shall be responsible for the safe-keeping of all the property of the state library, and shall cause all books, maps, charts, pamphlets, and other documents thereof to be impressed with the proper stamp or seal after the same has been procured. The state library commission may adopt rules and regulations for the government of the state library. *As amended, Stats. 1915, 310; 1919, 69.*

An Act to provide for extending the use of the state library.

Approved March 24, 1917, 347

Librarian to prepare catalogue—Residents may borrow books.

SECTION 1. The state librarian shall have prepared an author and subject catalogue, which shall contain every book in the miscellaneous department of the state library. It shall also contain all rules and regulations relating to said library, and shall be published in the state printing office in pamphlet form, the number of copies of said pamphlet to be designated by the state library commission. The cost of preparing and publishing this catalogue shall not exceed the sum of \$2,500. A copy of this catalogue shall be sent to every school library in the State of Nevada, and to any resident of the state who may apply for same. Whenever any resident of the state, who is vouched for by any resident property taxpayer of the state (who shall be the surety hereafter mentioned) outside his immediate family, shall apply for any book named in the catalogue, the librarian shall send said book to said party prepaid.

Duties of residents borrowing books.

SEC. 2. The party borrowing the book shall, after retaining it for a period not to exceed four weeks, return same prepaid, to the state library. Failure to return said book within the time specified shall subject the holder to a fine of ten cents per day for every day that the book is retained in excess of the time specified, and should such retention exceed a period of twenty days the state librarian shall declare all the privileges of such delinquent borrower under this act forfeited, and the fine shall be paid by the surety of the borrower, and should any book be damaged or lost the cost of the book or the damage thereto must be made good by the surety, who shall be held liable to the state. The state librarian may, at his discretion, send out books by insured mail or by express and require that they be returned in the same way.

School districts may borrow books.

SEC. 3. In like manner any school district in the State of Nevada may, through application by the teacher thereof, or where a principal is employed, by the principal thereof, or a member of the board of trustees, borrow books, not to exceed in number twelve at any one time, and for a period not to exceed four weeks, except that no personal surety shall be required. In case of any penalty being incurred, the same shall be a first claim against the library fund of such district until the same shall be paid in full.

Duty of state printer.

SEC. 4. The state printer is hereby required to print the catalogue of the library and other matters pertaining thereto and such supplements to this catalogue from time to time as the state library commission may designate.

Fines and penalties for library fund.

SEC. 5. All fines and penalties provided for in this act shall be paid into the state library fund, and duly accredited thereto.

Appropriation.

SEC. 6. The state library commission shall draw upon the state library fund for all moneys needed to carry this law into effect and maintain the work incidental thereto, including printing the catalogue and supplements; *provided*, that the amount so expended for the years 1917 and 1918 shall not exceed the sum of \$2,500.

3960. Repealed, Stats. 1915, 310.

STATE MILITIA

3967. Repealed, Stats. 1913, 38.

3975. Repealed, Stats. 1913, 38.

3980. Repealed, Stats. 1913, 38.

3991. Repealed, Stats. 1913, 38.

3998. Repealed, Stats. 1913, 38.

4027-31. Repealed, Stats. 1913, 38.

4056. Repealed, Stats. 1913, 38.

4062. Repealed, Stats. 1913, 38.

An Act to amend an act entitled "An act relating to the organized and to the enrolled militia," and to repeal certain acts in conflict therewith.

Approved March 7, 1913, 37

Composition of Nevada national guard.

SECTION 1. The national guard of Nevada shall be composed of such units, upon the approval of the governor of Nevada, as the war department of the United States may suggest, and of such other units as the governor may approve of.

Uniform.

SEC. 2. The national guard of Nevada shall be uniformed as the army of the United States is uniformed, except that the abbreviations "Nev. N. G." shall replace the letters "U. S." where those letters occur.

Governed by U. S. regulations.

SEC. 3. It shall be governed by the regulations made by the war department of the United States for the organized militia of the United States and such laws as the legislature of this state may enact and such rules and regulations as the governor of this state may make.

Governor to issue commissions—No fee.

SEC. 4. The governor, as commander-in-chief of the militia, shall issue commissions to all officers appointed or elected therein. The commissions shall be attested by the secretary of state with the great seal, and also by the adjutant-general with the seal of his office. No fee shall be charged for military commissions.

No double membership.

SEC. 5. No person shall be a member of more than one unit of the national guard at the same time.

Citizens subject to military duty.

SEC. 6. Every able-bodied male citizen of this state more than eighteen years and less than forty-five, not exempt by law, shall be subject to military duty, and shall be enrolled and organized as is now provided by law.

Repeal.

SEC. 7. All acts and parts of acts in conflict with this act are hereby repealed.

Certain sections of statutes repealed.

SEC. 8. Sections three, eleven, sixteen, twenty-seven, and thirty-four of an act entitled "An act relating to the national guard and the enrolled militia," approved March 6, 1893, and sections one, two, three, four, and five of an act entitled "An act relating to the Nevada national guard," approved March 6, 1899, and sections fifty-four and sixty-one of an act entitled "An act to provide for organizing and disciplining the militia of the state," approved March 4, 1865, are hereby repealed.

STATE ORPHANS' HOME

4087-4103. Cited, *McKinnon v. Harwood*, 35 Nev. 497 (130 P. 465).

4097. May discharge or apprentice children.

SEC. 11. Whenever said board shall deem it for the best interests of any child in said home, or of the state, they may discharge any child therein; and they are hereby empowered, whenever they may deem it meet and proper, to apprentice any child in said home to the head of any family, or to any person carrying on a useful and proper business; but in all such indentures of apprenticeship the board shall reserve the power to themselves at any time to cancel the same, and reclaim said child to the home whenever, in their judgment, the best interests of said child and the state shall demand. *As amended, Stats. 1919, 378.*

Cited, *McKinnon v. Harwood*, 35 Nev. 498 (130 P. 465).

4098. Dependent or neglected child may be admitted.

SEC. 12. Nothing in this act shall be construed to prevent the board of directors, at their discretion, from receiving any dependent or neglected child or children, when committed to the state orphans' home as herein-after provided; *provided, however*, that the state orphans' home is hereby

organized as a home for dependent and neglected children, who shall be subject to all the conditions of the act of March 24, 1909, relating to dependent and neglected children in addition to the other purposes for which the institution is established; and the board of directors are authorized and required to receive such dependent and neglected children as may be committed to the care of said institution. *As amended, Stats. 1903, 62; 1913, 367; 1915, 390; 1919, 378.*

Cited, *McKinnon v. Harwood*, 35 Nev. 498 (130 P. 465).

4099. State wards—Committed by district judge—County commissioners may act, when—Charge against the county—County to pay, when—Certain children denied entrance.

SEC. 13. Children admitted to the state orphans' home under the provisions of section twelve of this act, as amended, are hereby declared and adjudged to be wards of the state as fully as whole orphans; *provided*, that no child shall be received by the board of directors unless committed by the district court of the county in which such child resides; *provided, further*, that if the district judge is absent from the county, or from any cause is unable to act when an application is made for the commitment of any dependent or neglected child to the orphans' home, the county commissioners are hereby authorized to commit such child to said orphans' home; but any such commitment by any board of county commissioners is subject to review by the district court of the county from which such children were committed; *provided further*, that the expenses, transportation, and maintenance of such children, when committed to this institution by any district court or board of county commissioners of the state, shall become a charge against the county from which such children are committed, such charge for maintenance to be a reasonable rate to be fixed from time to time by the board of directors of said orphans' home; *provided*, that such rate shall not be less than one-half of the cost of such maintenance by the state; *provided*, that the district court, in its discretion, may order the parent, parents, guardian or guardians to reimburse the said county for the amount of the maintenance of such child or children in said orphans' home as fixed by the board of directors thereof; *and provided further*, that no child who is idiotic or who has any contagious disease shall be committed or received by the board of directors of said institution, but all children must be subject to a mental and physical examination under the direction of the board of directors. *As amended, Stats. 1903, 63; 1913, 368; 1915, 390; 1919, 379.*

Under this section, and Rev. Laws, 734, it was held the court could not commit to the state orphans' home a dependent or an afflicted child who was not an orphan, since an "orphans' home" is an institution or home for the care of destitute orphans, and is not a "reformatory" or institution in which young offenders are confined and instructed, with a view to their reformation. *McKinnon v. Harwood*, 35 Nev. 494, 498 (130 P. 465).

4102. Directors to advertise for supplies.

SEC. 16. The board of directors, upon the receipt of said estimate, may, at their discretion, give notice by advertising in one daily paper in Ormsby County for six days that sealed proposals will be received for furnishing to the state orphans' home all or any part of the quality and kind of stores, supplies, and fuel contained in the semiannual estimate then on file in the office of the secretary of the board of directors of said orphans' home. *As amended, Stats. 1915, 391.*

4103. Bids opened and awarded.

SEC. 17. The board of directors are hereby directed to meet at the office of the secretary, when bids have been called for, and then and there open

all the sealed proposals. The lowest sealed proposals in price shall be accepted and noted in the minutes of the secretary, and the secretary shall notify the person or persons of the acceptance of their proposal for furnishing the state orphans' home with stores, supplies, and fuel; *provided*, the board of directors shall have the right to reject any and all bids from persons not responsible. *As amended, Stats. 1915, 391.*

4105. Salary of superintendent and matron.

SECTION 1. From and after the first day of April, nineteen hundred and nineteen, the salary of the superintendent and matron of the state orphans' home shall be three thousand (\$3,000) dollars per annum for the services of both. *As amended, Stats. 1919, 258.*

4106. Orphans to attend Carson school.

SECTION 1. The children included in the state orphans' home shall be included in the school census of Carson City school district, and in consideration of this allowance and the further allowance of one thousand five hundred (\$1,500) dollars paid annually out of the general fund of the state treasury, the children of the state orphans' home shall be entitled to attend and shall attend the Carson City public schools and to receive therein the full attention, protection and instruction accorded to any other children, including the domestic and manual arts in the elementary grades with the addition of commercial branches in the high school, all of which shall be of standard character approved by the state board of education. To this end the board of directors of the state orphans' home is hereby authorized to enter into such agreement with the board of trustees of the Carson City school district, district No. 1, of Ormsby County, as may be necessary to carry out the provisions of this section and of this act; *provided*, that if in any year the domestic and manual arts and the commercial branches as hereinbefore named are not furnished as required herein, then the money allowance to said Carson City school district shall be but one thousand (\$1,000) dollars for such year; *and provided further*, that the increased income of said school district as herein provided shall be full consideration for the privileges required in this act. *As amended, Stats. 1913, 347.*

4107. Orphans to have books and supplies.

SEC. 2. The board of directors of the state orphans' home shall furnish the children of the home who are attending school all text-books, supplementary books and necessary school supplies; and they shall furnish a sufficient supply of proper library books for the use of said children; *provided*, that the above-mentioned books and supplies shall be purchased by said board and paid for out of the orphans' home fund; *and provided further*, that in case the state law shall require districts to furnish books and school supplies free to all children attending the public schools, then Carson school district shall furnish the supplies called for in this section. *As amended, Stats. 1913, 347.*

STATE OFFICERS

4110. Repealed, Stats. 1915, 310.

LEGISLATURE

An Act reapportioning senators and assemblymen of the several counties to the legislature of the State of Nevada.

Approved March 5, 1915, 73

4111. Apportionment of senators and assemblymen.

SECTION 1. The apportionment of senators and assemblymen in the several counties of this state shall be as follows:

Churchill County, one senator and two assemblymen;
 Clark County, one senator and two assemblymen;
 Douglas County, one senator and one assemblyman;
 Elko County, one senator and four assemblymen;
 Esmeralda County, one senator and three assemblymen;
 Eureka County, one senator and one assemblyman;
 Humboldt County, one senator and two assemblymen;*
 Lander County, one senator and one assemblyman;
 Lincoln County, one senator and one assemblyman;
 Lyon County, one senator and two assemblymen;
 Mineral County, one senator and one assemblyman;
 Nye County, one senator and four assemblymen;
 Ormsby County, one senator and one assemblyman;
 Pershing County, one senator and one assemblyman*;
 Storey County, one senator and one assemblyman;
 Washoe County, one senator and seven assemblymen;
 White Pine County, one senator and three assemblymen.

**As amended, Stats. 1919, 83.*

SEC. 2. Nothing in this act shall be construed as to affect the term of office of senators and assemblymen now in office.

SEC. 3. All acts and parts of acts in conflict with this act are hereby repealed.

4114-7. Repealed by implication by Stats. 1915, 360 (the following act).

An Act fixing the number of officers and attaches of the legislature of the State of Nevada, and to define their duties and specify their pay, and repealing all acts in conflict therewith.

Approved March 25, 1915, 360

Officers of senate.

SECTION 1. The officers and attaches of the senate shall consist of one secretary, one assistant secretary, one sergeant-at-arms, one minute clerk, one assistant minute clerk, one journal clerk, one assistant journal clerk, one engrossing clerk, one enrolling clerk, two committee clerks, one bill clerk, one stenographer, one mailing clerk, one messenger who shall be ex officio assistant sergeant-at-arms, one page, one porter.

*The legislature of 1919 did not directly amend the legislative apportionment act; but section 19 of an act amending the act creating Pershing County (Stats. 1919, pp. 82, 83) provides: "At the general election to be held in 1920 Humboldt County shall elect one state senator and two assemblymen, and Pershing County shall elect one state senator and one assemblyman. * * *

Officers of assembly.

SEC. 2. The officers and attaches of the assembly shall consist of one chief clerk, one assistant clerk, one sergeant-at-arms, one minute clerk, one assistant minute clerk, one journal clerk, one assistant journal clerk, one engrossing clerk, one enrolling clerk, one assistant enrolling clerk, one committee clerk, one stenographer, one mailing clerk, one messenger who shall be ex officio assistant sergeant-at-arms, two pages, one porter.

Extra qualifications.

SEC. 3. All clerks, excepting the secretary of the senate and the chief clerk of the assembly, shall be efficient stenographers and typists.

Salaries of officers.

SEC. 4. There shall be paid to the several officers and attaches named in this act, for all services rendered by them under the provisions of this act, the following sums of money and no more: The secretary of the senate and the chief clerk of the assembly shall each receive seven dollars per day; the assistant secretary of the senate and the assistant clerk of the assembly shall each receive six dollars per day; the minute clerk, the assistant minute clerk, the journal clerk, the assistant journal clerk, the engrossing clerk, the enrolling clerk of the senate and assembly, respectively, shall each receive six dollars per day; the sergeant-at-arms of the senate and of the assembly shall each receive six dollars per day; the committee clerk of the assembly and the committee clerks of the senate, the bill clerk of the senate, the assistant enrolling clerk of the assembly, and the stenographers of the senate and assembly, respectively, shall each receive six dollars per day; the messengers of the senate and assembly, respectively, shall each receive six dollars per day; the pages of the assembly and the page of the senate shall each receive two dollars per day; the porters of the senate and assembly, respectively, shall each receive three dollars per day; the mailing clerks of the senate and assembly, respectively, shall each receive six dollars per day; *provided, however*, that in case the senate or the assembly shall organize or act with a less number of attaches than herein provided, such organization or action shall be legal; *and further provided*, that the senate or the assembly may, by resolution, increase or diminish the number of its attaches any time during the session, within the limits hereinbefore provided.

Present officers not disturbed.

SEC. 5. Nothing in this act shall be construed as to affect the term of office of the officers and attaches now in office.

Duties of controller and treasurer.

SEC. 6. The state controller is hereby directed to draw his warrants in favor of the persons above named for the several amounts specified in this act, and the state treasurer is hereby directed to pay the same.

4120-4. Repealed by implication by Stats. 1915, 3 (the following act).

An Act providing for the printing and enrolling of legislative bills and resolutions, and other matters relating thereto.

Approved January 27, 1915, 3

Number fixed by resolution.

SECTION 1. The state printer shall print as many copies of every bill and resolution introduced in either house in the state legislature as shall be authorized by resolution of the branch of the legislature in which said bill or resolution is introduced, and in printing such bills and resolutions the

state printer is hereby authorized to correct in the copy furnished him all errors in spelling or punctuation, and to supply the enacting clause, if omitted; *provided*, that no change shall be made by the state printer which shall in any way vary the apparent meaning of said bill or resolution.

Copy to be in triplicate.

SEC. 2. All bills and resolutions shall be introduced in triplicate, and one copy of each bill or resolution shall be marked "original"; one shall be marked "duplicate;" one shall be marked "triplicate." The copy marked "duplicate" shall be sent to the state printer for the purpose of printing, and the copy marked "triplicate" shall be referred to the engrossing committee of the house in which such bill or resolution was introduced.

State printer to furnish special copy—Printed bill becomes original bill, when.

SEC. 3. The state printer shall immediately after receipt of the copy of any bill or resolution print, in addition to the regular number hereinbefore authorized, one copy thereof upon heavy buff paper, which copy shall be delivered to the engrossing committee of the house in which the bill or resolution originated. The said engrossing committee shall carefully compare the printed copy of said bill with the triplicate copy thereof and, if said printed copy is found to be in all respects correct, said engrossing committee shall cause the copy of said bill printed upon buff paper to be securely bound with a substantial cover on which the history of said bill shall be endorsed; the chairman of the engrossing committee of the house in which said bill or resolution originated shall then certify to the correctness of said bound copy and deliver same to the chief clerk of the assembly or secretary of the senate, as the case may be; whereupon said bound copy, printed upon buff paper so compared and certified to, shall be substituted for the original copy introduced and thereafter be deemed the official copy of said bill or resolution.

Engrossed copy may be ordered reprinted by resolution.

SEC. 4. When any bill or resolution is ordered engrossed the house ordering such engrossment may, as a part of such resolution, if deemed advisable, order such bill or resolution to be reprinted, one copy upon buff paper, for engrossment as amended, before being transmitted to the other house.

Printed bill may become enrolled bill, when.

SEC. 5. All legislative bills and resolutions shall be enrolled in type-writing on sheets of paper sixteen (16) inches by nine and one-half (9½) inches in dimensions with a one and one-half inch (1½) margin on left-hand side and top and bottom of said sheet, and not more than a one-inch (1) margin on right-hand side, ruling to be on both sides of each sheet. The paper shall be the best quality of ledger paper and suitable for making one clear carbon copy. An original and carbon copy shall be made. If the bill embraces more than one of said sheets they shall be temporarily bound together by a Hotchkiss fastener in the upper left-hand corner of said sheet. All portions of sheets not covered by type-writing shall be ruled off in red ink to prevent insertion of other matter. The complete history of each bill and resolution shall be endorsed in type-writing upon the back of the last sheet of the original copy thereof, and the same shall then be signed by the presiding officers of the respective houses and by the secretary of the senate and the chief clerk of the assembly. The original copy shall then be presented to the governor for his action. The duplicate copy thereof shall be deposited with the secretary of

state for transmission to the state printer to be used by him in preparation of the volume of statutes enacted at the session of the legislature; *provided*, the printed bill may by resolution be used as the enrolled bill in accordance with section 4124 of the Revised Laws of Nevada, 1912.

Enrolled bills to be bound.

SEC. 6. All legislative bills and resolutions deposited with the secretary of state after approval by the governor shall be bound in a substantial volume as now provided by law, together with an index thereof.

4122. Repealed, Stats. 1913, 3.

An Act fixing the limitation of time for the presentation to the legislature of alleged claims against the state for action thereon, and barring all future presentations thereof.

Approved April 1, 1919, 439

Alleged claims barred, when.

SECTION 1. Any person having, or claiming to have, any alleged claim against the State of Nevada, shall present such alleged claim for consideration to the next succeeding session of the legislature following its incurrence. Any such alleged claim not so presented, or which has been so presented, shall be forever barred from presentation to any subsequent legislature for further consideration.

Right to sue not impaired.

SEC. 2. Nothing herein contained shall be construed in any way to impair the rights of any claimant to bring an action against the state upon any such claim.

INSPECTOR OF APLARIES

An Act to create the office of state inspector of apiaries, to provide for the appointment of state inspector of apiaries, and to define his duties and compensation; to prevent the dissemination of diseases among apiaries, and to provide for a system of inspection of apiaries by the state inspector of apiaries, and the treatment and extermination of diseases therein; making appropriations for the expense of the office of state inspector of apiaries; and providing penalties for the violation thereof, and repealing all other acts or parts of acts in relation thereto.

Approved March 15, 1917, 198

Office created.

SECTION 1. The office of state inspector of apiaries in the State of Nevada is hereby created, and the governor may appoint in said State of Nevada a state inspector of apiaries, who is hereby empowered to appoint for a definitely limited period one or more deputies as may be needed to carry out the purposes of this act.

Duties of inspector and deputies.

SEC. 2. It shall be the duty of such state inspector of apiaries, either by himself or deputies, to inspect all apiaries, and all buildings used in connection with such apiaries within the State of Nevada, at least once each year; and at such other times as he may deem necessary, upon report to him or whenever he has reason to believe that any apiary or apiaries may be infected with any disease injurious to honey bees in their egg, larval, pupal or adult stages. If the inspector finds any such disease to exist in any apiary, appliance, structures, or buildings, he shall give to the owner or owners, caretaker or caretakers of such diseased property

full instructions for such treatment as in the inspector's judgment seems best. The inspector, once each year, shall report the location and ownership of every apiary, with the number of bee colonies to the assessor of the county wherein situated.

Infected property destroyed, when.

SEC. 3. The owner or owners, caretaker or caretakers of such diseased properties shall, within ten days after notice by the inspector of the presence of such disease, proceed to treat the same as advised and directed by the said inspector. The inspector shall, if it is deemed necessary, make a second examination of all diseased apiaries, property, and premises after ten days, or as soon thereafter as he shall deem advisable. If, in this second examination, a diseased condition shall be found which is in any manner dangerous to the welfare of honey bees in any of their stages, the inspector shall see that the proper treatment is immediately given, and the full expense of such treatment shall be paid by the owner of the property treated, and all the expenses of such treatment shall act as a lien on the property until paid. If the inspector finds conditions such that further remedial treatment is inadvisable, he may burn a part or all of such diseased property to prevent further spread of disease, without recompense to the owner, lessees, or agent thereof. In the annual inspection of apiaries, hereinbefore provided for in this section, the inspector shall inspect each and every hive in said apiary or apiaries.

Misdemeanor to dispose of infected bees and honey.

SEC. 4. If the owner, owners, lessee, lessees, agent, or caretaker of an apiary, including appliances, structures, buildings and honey, wherein diseases exist, shall knowingly sell, barter, or give away, or move, without the consent of the inspector, any diseased bees, be they queens or workers, colonies, honey, combs, appliances, or structures, or knowingly expose other bees to the danger of such disease, said owner, owners, lessee, lessees, agent, or caretaker shall, on conviction, be liable to a fine of not less than fifty dollars nor more than one hundred dollars, or not less than one nor more than two months' imprisonment in the county jail.

Inspector to have access to all apiary premises.

SEC. 5. For the enforcement of the provisions of this act, the state inspector of apiaries or his deputy shall have access to all apiaries, appliances, structures, and premises where bees or their products are kept, and any person or persons who shall resist, impede, or hinder in any way the inspector or the deputy inspector in the discharge of his duties under the provisions of this act shall, on conviction, be liable to a fine of not less than fifty dollars nor more than one hundred dollars.

Precautions must be taken.

SEC. 6. After inspecting infected hives or fixtures, or handling diseased bees, the inspector or his deputy, and their assistant or assistants, shall, before leaving said premises or proceeding to any other apiary, thoroughly disinfect any portion of his own person and clothing, and any tools or appliances used by him which have come in contact with infected material, and shall see that any other assistant or assistants with him have likewise disinfected their person and clothing and all tools and appliances used by them.

Inspection of queen-rearing apiaries.

SEC. 7. It shall be the duty of any person in the State of Nevada engaged in the rearing of queen bees for sale, when honey is used in the making of

candy for use in mailcages, to boil such honey for at least thirty minutes. Any person engaged in the rearing of queen bees shall have his queen-rearing apiary or apiaries inspected at least twice during each summer season, and on the discovery of any disease which is infectious or contagious in its nature and injurious to bees in their egg, larval, pupal, or adult stages, said person shall at once cease to ship queen bees from such diseased apiary until the inspector of apiaries shall declare the said apiary free from all disease, by the issuance of a certificate of inspection. On the complaint of the inspector of apiaries or any beekeeper in the state that said beekeeper engaged in the rearing of queen bees is violating the provisions of this section, he shall, on conviction, be liable to a fine of not less than one hundred dollars nor more than two hundred dollars.

Importers must show certificate.

SEC. 8. Any party, parties, person, or persons bringing bees or combs, or previously used apiary supplies into the State of Nevada, must possess a valid certificate of inspection showing that such property has been inspected by an authorized inspector of the state or territory from which the shipment was made and that the same is free from communicable bee diseases. It shall be the duty of any person or persons so shipping or bringing bees into this state, or any combs, or apiary appliances, previously used, to notify the state inspector or his deputy within forty-eight hours before their arrival at the point where the same are to be unloaded, and the place of such unloading, for the purpose of allowing and permitting the inspection thereof by the said inspector or his deputy.

Movable frame hives only.

SEC. 9. It shall be unlawful for any person or persons to have in his or their possession any bees kept in other than movable frame hives.

Beekeepers must report to inspector—Penalty for neglect.

SEC. 10. Any person or persons within this state, owning or having in their possession as owner, lessee, or otherwise, one or more colonies of bees, shall report the number of colonies so in his possession on or before the first day of April of each year to the state inspector of apiaries, together with a description of the place or locality where the same are kept and located. Any person violating the provisions of this section by failure or neglect to make such report shall, on conviction, be liable to a fine of not less than five dollars nor more than twenty-five dollars.

General penalty.

SEC. 11. Any person or persons violating any of the provisions of this act, for the violation of which no specific punishment is hereinbefore expressly provided, shall, upon conviction, be liable to a fine of not less than five dollars nor more than fifty dollars.

District attorney to act.

SEC. 12. It shall be the duty of each district attorney to whom the state inspector of apiaries, or his deputy, shall present satisfactory evidence of violation of any provision or provisions of this act from sections 7 to 11, inclusive, to institute and prosecute without delay the appropriate proceedings in the proper courts for the enforcement of the provisions of said sections.

Appropriation for salaries.

SEC. 13. There is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, a sum not exceeding \$1,500 each year, for the suppression of bee diseases in the State of Nevada, and for the

carrying out of the provisions of this act. The state inspector of apiaries shall receive a salary of \$800 per annum, payable in twelve equal monthly payments, together with his actual and necessary traveling expenses. Deputies appointed by the state inspector of apiaries shall receive compensation not to exceed \$4 per day, together with their necessary and actual traveling expenses.

Inspector to report yearly.

SEC. 14. The state inspector of apiaries shall keep an accurate account of moneys received and expended and shall file a detailed annual report of the work done and expenditures made, with the governor of the State of Nevada. In addition said annual report shall cover the essential phases of beekeeping conditions in the State of Nevada.

Repeal of previous acts.

SEC. 15. An act to prevent the dissemination of disease among apiaries; to provide for the appointment of an inspector, and to define his duties and compensation, and repealing all other acts and parts of acts in relation thereto, approved March 27, 1913; and all other acts and parts of acts in conflict with provisions of this act are hereby repealed.

ARCHITECT

An Act to provide for the employment of a supervising architect for the state.

Approved April 1, 1919, 465

State architect appointed, how.

SECTION 1. The state engineer is hereby authorized, empowered, and directed to appoint a competent architect, whose business it shall be to prepare plans and specifications and supervise the construction of all buildings of the state for the erection of which provision has been made at the present session of the legislature, either by authorization of bond issues or by direct appropriations.

Salary.

SEC. 2. The salary of said supervising architect shall be not to exceed \$5,000 per year, and shall be paid pro rata out of the appropriations or bond issues made for the erection of such buildings according to the cost thereof.

Bond.

SEC. 3. Said supervising architect, before entering upon the duties of his office, shall make and execute a bond, with good and sufficient surety or sureties, payable to the State of Nevada in the sum of ten thousand dollars, and conditioned for the faithful performance of the duties of his office.

ASSAYER

An Act creating the office of state assayer and inspector and providing for the appointment of such officer, defining his duties and other matters relating thereto.

Approved March 27, 1917, 449

Office created.

SECTION 1. The office of state assayer and inspector for the State of Nevada is hereby created.

Salary and expenses, bond.

SEC. 2. The state assayer and inspector shall receive as full compensation for his services a salary of three thousand (\$3,000) dollars per annum

and his necessary traveling expenses when traveling in the discharge of his official duties, and necessary expenses for deputy hire, postage, stationery, printing, and other office expenses; *provided*, said compensation and all expenses except deputy hire shall be paid as the salary and expenses of other state officers are paid. Before entering upon the discharge of his duties he shall file an official bond in the sum of ten thousand (\$10,000) dollars, conditioned for the faithful performance of the duties of said office, in form and manner as other official bonds of state officers.

Qualifications—Oath.

SEC. 3. The state assayer and inspector shall not at the time of his appointment, or at any time during his term of office, be an owner, officer, director or employee of any mining corporation, smelter, sampler or mill which purchases ore or does custom work, and he shall not hold stock or bonds of or in any smelter, sampler or mill purchasing ore or doing custom work. He shall further be a practical mining man and have had at least five years actual and immediate experience in the mining business and shall be a qualified assayer and metallurgical chemist of at least three years actual experience. The state assayer and inspector and his deputies shall each take and subscribe the following oath:

State of Nevada, }
County of..... } ss.

I,, of County, do solemnly swear that I will do and perform each and every duty required by me as state assayer and inspector for the State of Nevada; that I will never at any time divulge or disclose to any person or persons, directly or indirectly, under any circumstances, any information relative to assays, tonnage reports or other data secured or received by me as state assayer and inspector, except to the parties directly interested or by their express permission. So help me God.

Nothing in said oath shall be construed to prevent said officer from making statistical reports as required by law.

Office at capitol.

SEC. 4. The state assayer and inspector shall be provided with a properly furnished office at the state house in Carson City, Nevada, in which he shall carefully keep a complete record of all his official acts.

Mining operators to report.

SEC. 5. It is hereby made the duty of the owner, lessor, lessee, agent, manager or other person in charge of each and every sampler, ore purchaser and custom mill of any kind or character in Nevada, to forward monthly on the first day of each and every month to the state assayer and inspector, a statement of the tonnage of ores received and the camp from which shipped.

Duties—Fees.

SEC. 6. It shall be the duty of the state assayer and inspector to take charge at the destination thereof of all ores consigned to samplers, custom mills or other ore purchasers located in this state, whenever requested so to do by the owner or forwarder of such shipments. The state assayer and inspector shall sample such ores taken charge of with the purchaser or independently as he may see fit and at any and all times he may see fit and samples taken by him shall be assayed at the state analytical laboratory. The shipper or owner of such ore shall pay the State of Nevada the sum of twenty-five (25) cents the ton for the services as rendered in taking charge of, sampling and assaying the said ores, and the purchaser of such ores

shall withhold the amount so due the State of Nevada from the money due said shipper as a prior charge and forward the sum so withheld to the state treasurer of Nevada to be placed in a fund to be known as the "Assayer and Inspector Fund." The assayer and inspector shall forward immediately to the owner or shipper the assays and result of sampling done by him. He shall also do whatever other things are necessary and requisite to protect the rights and interests in the ore of the consignor; *provided*, that if the ore is consigned or marketed at a sampler, purchaser or custom mill where less than fifty (50) tons of ore daily are received and sampled by the state assayer and inspector, the consignor shall be required to pay the actual costs of such inspection and sampling, including traveling expenses and deputy hire. The assayer and inspector shall also make daily statements to the state treasurer for checking purposes.

Fees to go into fund.

SEC. 7. All moneys received by the state treasurer for taking charge of and sampling ores shall be deposited in a separate fund to be known as the "Assayer and Inspector Fund," and paid out as herein provided.

Deputies may be appointed.

SEC. 8. The state assayer and inspector may appoint deputies as necessary, at a wage of not to exceed five (\$5) dollars the day and traveling expenses; *provided*, said deputies shall be paid out of the fund known as the "Assayer and Inspector Fund," in the state treasury, and no deputy hire shall be incurred unless there are sufficient funds on hand to pay the per diem and expenses in said fund. All bills of the state, including the wages of deputies, shall be submitted to and allowed by the board of examiners of Nevada.

Governor to appoint.

SEC. 9. Said appointment shall be made by the governor, and said state assayer shall hold office at the pleasure of the governor.

Words and phrases construed.

SEC. 10. The words and phrases of this act, unless such construction be inconsistent with the context, shall be construed as follows:

(a) The word "sampler," any individual, copartnership, company, association or corporation buying, purchasing, accepting consignments of or receiving for delivery any mineral-bearing ore from any mine or mines not owned and operated by it.

(b) The words "custom mill" shall include any mill, smelter or any other plant used for the reduction of ores and extracting the mineral therefrom, which treats and reduces ores other than those produced and extracted from a property owned and operated wholly by it.

(c) The word "purchaser" and "ore purchaser" include any individual, copartnership, company, association and corporation which purchases, buys, accepts on consignment, or for delivery, any mineral-bearing ores.

SEC. 11. [Carrying appropriation; omitted.]

Penalties for violation.

SEC. 12. A violation of any provision of this act shall be a misdemeanor and punishable with a fine of not less than twenty-five (\$25) dollars, nor more than five hundred (\$500) dollars, or imprisonment in the county jail not to exceed four (4) months.

Each section independent.

SEC. 13. Each section of this act and every part of each section is hereby declared to be independent sections and parts of sections, and the holding

of any section or part thereof to be void or ineffective for any cause shall not be deemed to nor affect any other section or any part thereof.

ATTORNEY-GENERAL

4145. Salary of commissioner.

SEC. 5. The mineral land commissioner may appoint as many deputies as he may deem necessary for the carrying out of the provisions of this act. All fees or charges of such deputies shall be paid out of the salary herein provided for the mineral land commissioner. The mineral land commissioner shall receive a salary of fourteen hundred dollars per annum, payable in equal monthly installments, the same as the salaries of other officers of the state are paid, and the state controller is hereby authorized to draw his warrant and the state treasurer is hereby directed to pay the same out of any money not otherwise then especially appropriated. The state mineral land commissioner shall make no charge nor shall he receive any other fees than the salary herein provided. As amended, Stats. 1915, 326.

An Act authorizing the attorney-general of the State of Nevada, with the consent of the governor of Nevada, to commence and maintain certain actions in the supreme court of the United States, or in any court having jurisdiction thereof.

Approved March 15, 1915, 159

To maintain certain water suits.

SECTION 1. The attorney-general of the State of Nevada, with the consent of the governor, is hereby authorized to commence and maintain, or defend, in the supreme court of the United States, or in any court having jurisdiction of the action, in the name of the State of Nevada, or otherwise, such proceedings at law or in equity as in his judgment may be necessary or expedient for the purpose of establishing and determining the rights of the State of Nevada, or the residents thereof, in and to the waters of all interstate streams located partly in the State of Nevada, where such waters, or part thereof, are claimed by any other state or the citizens thereof.

May intervene, when.

SEC. 2. The attorney-general of the State of Nevada, in the name of the state, is likewise authorized to intervene in any action or proceeding at law or in equity, which may now or hereafter be pending, when it is necessary or incident for the purpose of establishing and determining the rights of the State of Nevada or the residents thereof in and to the waters of all interstate streams located partly in Nevada, where such waters or a part thereof are claimed by any other state or the citizens thereof; *provided, however*, that the attorney-general shall not obligate the state in any intervention for any costs or expenses.

An Act to protect the people of the State of Nevada from the pollution of its public streams, making an appropriation therefor, and controlling the administration thereof.

Approved March 8, 1917, 51

To prevent pollution of waters.

SECTION 1. It shall be the duty of the attorney-general, with the consent of the governor, to commence such action or actions, suit or suits, against any and all persons, municipalities, towns, cities, corporations, or associations, as may be necessary to prevent or restrain the pollution of any public

stream or streams of the State of Nevada, or any public stream or streams running in, into or through the State of Nevada, whether the source of pollution be within or without the State of Nevada.

Attorney-general to institute suits.

SEC. 2. The attorney-general is authorized, empowered, and directed, with the consent of the governor, to take such proceedings and commence and maintain such action or actions, suit or suits, as may be necessary or proper to prevent or restrain the pollution of any public stream or streams in the State of Nevada, or any public stream or streams running into, in or through the State of Nevada and to maintain and prosecute such action or actions, suit or suits, in the name of the State of Nevada, whether the source of pollution be within or without the State of Nevada.

SEC. 3. [Carrying appropriation; omitted.]

Legislative committee to be appointed.

SEC. 4. Within ten (10) days after the passage and approval of this act, the president of the senate shall appoint one member of the senate and the speaker of the assembly shall appoint one member of the assembly, who shall constitute a committee of the legislature for the purposes hereinafter mentioned; they shall continue to exercise the duties of such committee until ten days after the convening of the next regular session of the legislature, within which ten days their successors shall be appointed in the same manner and the committee shall be perpetuated indefinitely in the same manner. Any vacancy in the committee which may occur from any cause, including failure of the proper officer to appoint, shall be filled by the governor.

Committee to act as advisory board.

SEC. 5. The committee hereby created, together with the governor and attorney-general, shall constitute an advisory board for the purpose of carrying out this act, which board shall have power to select, employ, and fix the compensation of such legal assistants, experts, chemists, stenographers, and other assistants to the attorney-general and to authorize such other expenses as they may deem necessary and proper to carry out the provisions of this act.

Majority may act.

SEC. 6. A majority of the advisory board may act upon all matters. In case of a tie vote the governor shall cast an additional deciding vote.

Examiners to approve expenditures.

SEC. 7. All expenditures from the appropriation hereby made shall be subject to the approval of the board of examiners.

AUDITOR

4148-53. Repealed, Stats. 1917, 59, and following act (Stats. 1917, 56) substituted:

Cited, *Stone v. Bell*, 35 Nev. 246 (129 P. 450).

An Act to provide for the appointment of a state auditor, fix his compensation, prescribe his duties, to inspect and audit public accounts and to establish a uniform system of public accounting, cost-keeping and reporting, and matters relating thereto, and to repeal certain acts and parts of acts in conflict herewith.

Approved March 10, 1917, 56

Creating office.

SECTION 1. Within thirty days after the approval of this act the

governor shall appoint a state auditor, who shall hold office for the term of four years from and after his appointment or until his successor shall have been appointed. The governor may at any time, for cause, remove said state auditor. His successor shall, in all cases, have the qualifications hereinafter provided.

Qualifications of appointee.

SEC. 2. The state auditor shall be a person duly qualified for the position. He shall be thoroughly versed in the science of bookkeeping and accounts, single and double entry, combination loose-leaf, and other systems in common use, auditing, and commercial law.

Duties—Uniform system.

SEC. 3. It shall be the duty of the state auditor, at least once in each calendar year, to make a thorough audit of the books and accounts of all state offices, departments, and institutions required by law to keep books or accounts showing the receipt or payment of money by, for, or on account of the state, and report the result of such audit to the governor forthwith. It shall further be the duty of the state auditor, at least once in each calendar year, to make a thorough audit of the books and accounts of all county officials required by law to have and keep their offices at the county-seats of the several counties in this state; copies of such reports relating to the accounts of the officers of the different counties shall be furnished by the state auditor to the governor, the state controller, and the clerk of the board of county commissioners of the several counties. The state auditor shall formulate and prescribe a uniform system of accounting, cost-keeping, and reporting for every state and county office, department, or institution which shall exhibit the true financial condition, correct accounts, and statements of funds collected, received, and expended for account of the public, for any purpose whatever and by all public officers, employees, or other persons; such accounts or statements to show the receipt, use, and disposition of all public property, and the income, if any, derived therefrom, and of all sources of public income and the amounts due and received from each source, all receipts, vouchers, and other documents kept, or that may be required to be kept, necessary to prove the validity of each transaction, and all statements and reports made or required to be made for the internal administration of the office to which they pertain, and all statements and reports regarding any and all details of the financial administration of public affairs.

Certain boards and governor to approve system.

SEC. 4. The system provided for in the preceding section shall be submitted by the state auditor in all of its detail to the state board of revenue and the state board of accountancy in joint session, and when approved by said boards and by the governor said system shall be installed under the supervision of said state auditor in any or all state and county offices, institutions and departments; *provided, however*, that the state auditor in making such installation shall give due consideration to the possibilities of confusion in business detail and may defer temporarily such installation in whole or in part if in his judgment the best interests of the public will be thereby served.

All officials to cooperate—Expense, how paid.

SEC. 5. All public officials, or other persons required to keep accounts or records of public financial affairs, shall, immediately upon being served with a copy of the order by the governor for the installation of any determined system of accounts or reports, proceed with the installation of such

system under the supervision and direction of the state auditor. All necessary expense attached to such installation for books, records, and supplies, if for state offices, shall be paid from the general appropriation for capitol current expenses, upon approval of the state auditor and by authority of the state board of examiners, and the state controller is hereby directed to draw his warrant therefor and the state treasurer to pay the same; if for other state departments or institutions, it shall be paid out of the regular appropriations for such departments or institutions upon the approval of the state auditor and by authority of the state board of examiners, and the state controller is hereby directed to draw his warrants therefor and the state treasurer to pay the same; if for county offices, departments or institutions, it shall be paid out of the county general fund upon order of the board of county commissioners.

Definition of terms.

SEC. 6. For the purpose of this act the term "public accounts" shall mean any books, records or accounts, recording a financial transaction in which any claim, money, or property of the state, county, township, or school district is involved. The term "public official" or "officer" shall mean any state, county, township, or school-district officer, employee, or other person having the care or custody of such records, money or property.

Further duties—Penalty.

SEC. 7. The state auditor shall be and he hereby is authorized to examine all public accounts, administer oaths, and to examine under oath, when he shall deem it necessary, any public official in relation to or concerning his books and accounts, and any such officer refusing to allow the state auditor full access to and inspection of his books, or of the accounts therein contained, or any records or data pertaining to the conduct of his office, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than \$100 nor more than \$300, or be imprisoned in the county jail for a period of not to exceed six months, or be punished by both such fine and imprisonment.

To keep full record.

SEC. 8. The state auditor shall be required to keep a record of his investigations, together with a general summary of the detail and data of the affairs of the respective counties and state offices, departments and institutions, and shall be provided with office room in the state capitol building. The room herein specified shall be open to the public during the hours other state offices are open, and in the absence of the state auditor from the state capitol, while in performance of his official duty, said record shall be left with the state controller for such public inspection.

Salary.

SEC. 9. The salary of the state auditor is hereby fixed at three thousand dollars per annum, payable in equal monthly installments, the same as other state officers are paid.

Appropriation for expenses.

SEC. 10. The sum of twenty-five hundred dollars is hereby annually appropriated, out of any moneys in the state treasury not otherwise appropriated, to carry out the purpose of this act, and which shall be available for all traveling and other necessary expenses. All such expenditures shall be certified to by the state auditor, and when approved by the state board of examiners shall be paid by the treasurer on warrants drawn by the controller.

To make annual report.

SEC. 11. The state auditor shall make and publish annual reports for each calendar year, showing his activities during the year.

Must take official oath and give bond.

SEC. 12. The state auditor shall, before entering upon the discharge of his duties, take and subscribe the usual oath of office and execute to the State of Nevada a bond in the sum of ten thousand dollars for the faithful performance of his duties, bond to be approved by the governor and filed with the secretary of state.

Printing at state printing office.

SEC. 13. All forms, blanks, envelopes, letterheads, circulars, and reports required to be printed by said state auditor shall be printed at the state printing office under the general provisions of an act entitled "An act to designate and authorize the work to be done in the state printing office," approved March 5, 1909.

Repeal of certain acts and portions of acts.

SEC. 14. An act entitled "An act to provide for the appointment of a state auditor, fix his compensation and prescribe his duties," approved March 26, 1907; an act entitled "An act providing for the examination and auditing of the books and accounts of certain officers, and providing penalties for its violation," approved March 20, 1911; section 4 of an act entitled "An act to create a state board of accountancy, and prescribe its powers and duties; to provide for the examination of and issuance of certificates to applicants, with the designation of certified public accountants, to provide for examination of state, county, and city accounts, and to provide the grade of penalty for violations of the provisions hereof," approved March 24, 1913, and reading as follows: "When required by law or otherwise that examination be made of the books, records, or accounts of any officer, department, or public institution of the State of Nevada, or of any city or county therein, such examination shall be made by a certified public accountant, duly qualified as such, under the provisions of this act," and all other acts and parts of acts in conflict with the provisions of this act are hereby repealed.

CONTROLLER**4156. Annual report of state controller, what shall contain.**

SEC. 3. He shall digest, prepare, and report to the governor, on the first day of January, or within twenty-five days thereafter, annually, to be laid before the legislature at each regular session, a complete statement of the condition of the revenues, taxable funds, resources, incomes, and property of the state, and the amount of the expenditures for the preceding fiscal year; a full and detailed statement of the public debt; estimate of the revenues and expenditures for the succeeding fiscal year; also, a tabular statement showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended; a tabular statement showing the amount of revenue collected from each county for the preceding year; and shall recommend such plans as he may deem expedient for the support of the public credit, for promoting frugality and economy in the public offices, for lessening the public expenses, and, generally, for the better management and more perfect understanding of the fiscal affairs of the state. *As amended, Stats. 1915, 94.*

An Act authorizing the ex officio insurance commissioner to employ a clerk, and establishing the compensation therefor.

Approved March 20, 1917, 233

Authorizing clerk.

SECTION 1. The ex officio insurance commissioner is hereby authorized to employ a clerk, whose salary shall be twelve hundred dollars per annum, payable in equal monthly installments, from the general insurance fund.

4157. To keep accounts.

SEC. 4. The controller shall open and keep an account with each county, charging the counties with the revenue collected, as shown by the auditor's statements, and also with their proportions of the salaries of the district judges, and crediting them with the amounts paid to the state treasurer. He shall also keep and state all accounts between the State of Nevada and the United States, or any state or territory, or any individual, corporation, or public officer of this state, indebted to the state, or intrusted with the collection, disbursement, or management of any moneys, funds, or interests arising therefrom, belonging to the state, of every character and description whatsoever, where the same are derivable from or payable into the state treasury. He shall settle the accounts of all county treasurers, and other collectors and receivers of all state revenues, taxes, tolls, and incomes, levied or collected by any act of the legislature and payable into the state treasury. He shall keep fair, clear, distinct, and separate accounts of all the revenues and incomes of the state, and also all the expenditures, disbursements, and investments thereof, showing the particulars of every expenditure, disbursement, and investment, and he shall have the power to direct the collection of all accounts or moneys due the state, and if there be no time fixed or stipulated by law for payment of any such accounts or moneys, they shall be payable at the time set by the controller. *As amended, Stats. 1915, 94.*

Under Const. art. 5, sec. 21. art. 4, sec. 19, art. 5, sec. 22, Rev. Laws, 4459, this section, Rev. Laws, 4158, Rev. Laws, 4159, and Stats. 1913, 137, it was held that the words "state treasury" did not include the state insurance fund, which was a special fund given to the treasurer in trust, as distinguished from the general taxes and revenues of the state, and that the requirement for presentation of claims to the board of examiners and the issuance of warrants by the controller did not apply. *State ex rel. Beebe v. McMillan*, 36 Nev. 383, 385 (136 P. 108).

4158. See *State ex rel. Beebe v. McMillan*, 36 Nev. 383, 385, under section 4157.

4159. See *State ex rel. Beebe v. McMillan*, 36 Nev. 383, 385, under section 4157.

4159. To draw warrants, and keep accounts.

SEC. 6. He shall draw all warrants upon the treasury for money, and each warrant shall express, in the body thereof, the particular fund out of which the same is to be paid, the appropriation under which the same is drawn, and the nature of the service to be paid, and no warrant shall be drawn on the treasury except there be an unexhausted specific appropriation, by law, to meet the same. He shall keep an account of all warrants by him drawn on the state treasury, which account shall be kept in such manner as to show monthly the amount of warrants drawn, the amount paid, and the amount outstanding. He shall keep a record of all appropriations in a book provided for that purpose, in which book he shall enter the nature of the appropriation, referring to the statute authorizing the same, the amount appropriated, the amount paid therefrom for each month thereafter, with a yearly total of all payments and the balance remaining, and the amount, if any, reverting. *As amended, Stats. 1919, 95.*

Const. art. 4, sec. 19. (Rev. Laws, 277), provides: "No money shall be drawn from the treasury but in consequence of appropriations made by law." Stats. 1915, 95, amending this section provides: "No warrant shall be drawn on the treasury, except there be an unexhausted specific appropriation, by law, to meet the same." Held, that Stats. 1911, 189, sec. 13, was sufficient to make appropriation for claims arising under it, and that, as the legislature made no appropriation in 1917, respondent, a deputy superintendent of public instruction, could recover under section 13 for expenses for year 1917. *McCracken v. State*, 41 Nev. 49, 54 (167 P. 1001).

4172. Various funds named.

SEC. 19. He shall keep accounts with the following-named funds heretofore created: Automobile road fund, contingent university fund, district judges' salary fund, Panama-Pacific exposition fund, Panama-California exposition fund, general fund, normal training-school funds for various counties, state distributive school fund, state permanent school fund, state loan interest and redemption fund, state library fund, territorial interest fund, Nevada school of industry fund, sheep inspection fund, and such other funds as may hereafter be created, or as said controller may deem advantageous to keep. He shall credit the funds with the amount of money received, and shall charge them with the amount of warrants drawn. *As amended, Stats. 1915, 95.*

4173. Account with state treasurer.

SEC. 20. He shall keep a record of all receipts of money by the treasurer, in a book provided for that purpose, in which book he shall show in detail the nature of the receipts and the apportionment of the amount to the various funds. He shall charge the treasurer and shall credit the income accounts with all money received. *As amended, Stats. 1915, 95.*

4175. Warrant register.

SEC. 22. He shall draw a warrant in favor of any person entitled to draw or to receive any money from the treasury, and deliver the same to the person entitled thereto. He shall keep a warrant register, in which book he shall enter all warrants drawn by him. The arrangement of this book shall be such as to show the bill number, the warrant number, the amount, out of which fund the same are payable, and a distribution of the same under the various appropriations and into the various asset and expense accounts. He shall credit the treasurer with all warrants paid. *As amended, Stats. 1915, 95.*

4176. Record of assignments.

SEC. 23. He shall keep a record of all assignments of warrants in a book provided for that purpose, in which book he shall enter the date of filing, the number, the name of the assignor and assignee, with such other particulars as may be necessary to accomplish the purposes of such a record. *As amended, Stats. 1915, 96.*

ENGINEER

An Act creating the office of state engineer; making provision for conducting same and repealing sections 10 and 13 of the water law of Nevada which is fully identified by title in this act.

Approved March 28, 1919, 197

Office created.

SECTION 1. The office of the state engineer is hereby created. The state engineer shall be appointed by the governor and shall receive a salary of

\$4,000 per annum, payable in equal monthly installments as other state officers are paid. He shall keep his office at the state capitol. No person shall be appointed as state engineer who does not have such training in hydraulic and general engineering, and such practical skill and experience as shall fit him for the position. He shall hold office for the term of four years from and after his appointment, or until his successor shall have been appointed. The governor may at any time for cause remove said state engineer. His successor shall in all cases have the qualifications as herein-before provided.

Duties—Assistant—Expenses.

SEC. 2. The state engineer shall perform such duties as are or may be prescribed by law. He may employ an assistant engineer at a salary of \$3,600 per annum, payable in equal monthly installments as state officers are paid. He may, upon the approval of the board of examiners first had and obtained, employ such other assistants at such salary or compensation as may be necessary and such assistants shall, where practicable, be paid monthly as state officers are paid, but otherwise they shall be paid by the state treasurer on warrants drawn by the state controller on the certificate of the state engineer.

The state engineer may purchase such material and incur such expenses for traveling and other purposes as may be necessary for the proper conduct and maintenance of his department to be paid for from the moneys which may be appropriated for such purposes from time to time, as other state claims are paid.

Certain sections of former act repealed.

SEC. 3. Sections 10 and 13 of that certain act entitled "An act to provide a water law for the State of Nevada; providing a system of state control; creating the office of the state engineer and other offices connected with the appropriation, distribution and use of water, prescribing the duties and powers of the state engineer and other officers and fixing their compensation, prescribing the duties of water users and providing penalties for failure to perform such duties; providing for the appointment of water commissioners, defining their duties and fixing their compensation; providing for a fee system, for the certification of records, and an official seal for the state engineer's office; providing for an appropriation to carry out the provisions of this act, and other matters properly connected therewith, and to repeal all acts and parts of acts in conflict with this act, repealing an act to provide for the appropriation, distribution and use of water, and to define and preserve existing water rights, to provide for the appointment of a state engineer, an assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners and defining their duties, approved February 26, 1907; also repealing an act amendatory of a certain act entitled 'An act to provide for the appropriation, distribution and use of water, and to define and preserve existing water rights, to provide for the appointment of a state engineer and assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners and defining their duties, approved February 26, 1907, and to provide a fee system for the certification of the records of, and an official seal for the state engineer's office and other matters relating thereto,' approved February 20, 1909," approved March 22, 1913, are hereby repealed.

4192. Cited, *State ex rel. Fowler v. Eggers*, 33 Nev. 536 (112 P. 699).

INSPECTOR OF MINES

4201. To post notices of recommendations—Statistics of mineral resources—To establish code of signals.

SEC. 4. It shall be the duty of the inspector of mines at least once a year, to visit in person each mining county in the State of Nevada and examine all such mines therein as, in his judgment, may require the examination for the purpose of determining the condition of such mines as to safety, and said inspector of mines shall post or cause to be posted, in a prominent place upon the gallows-frame or other superstructure at the collar of the main workings of such mine, a copy of his recommendations within twenty-four hours from the date of such examination, and it shall be the duty of the inspector of mines to collect information and statistics relative to mines and mining and the mineral resources of the state, and to collect, arrange, and classify mineral and geological specimens found in this state and to forward the same to the state school of mines, and it shall be the duty of the inspector of mines to establish a uniform code of signals. *As amended, Stats. 1915, 9.*

4203. Office to be provided—Records to be preserved—Mine owners to report.

SEC. 6. The inspector of mines shall be provided with a properly furnished office at the state house in Carson City, Nevada, in which he shall carefully keep a complete record of all mines examined, showing the date of examination, the condition in which the mines were found, the manner and method of working, the extent to which the laws are obeyed, and what recommendations, if any, were ordered by the inspector. It is hereby made the duty of the owner, lessor, lessee, agent, manager or other person in charge of each and every mine, of whatever kind or character, within the state, to forward to the inspector of mines at his office, not later than the first day of June in each year, and in all cases when commencing operations, a detailed report showing the character of the mine, the number of men then employed and the estimated maximum number of men to be employed therein during the ensuing year, the method of working such mine and the general condition thereof, and such owner, lessor, lessee, agent, manager, or other person in charge of any mine within the state must furnish whatever information relative to such mine as the inspector of mines may from time to time require for his guidance in the proper discharge of his official duties. *As amended, Stats. 1917, 29.*

4206. May appoint deputies—Salary.

SEC. 9. The inspector of mines shall have power to appoint two deputy inspectors, who shall each receive a salary of two hundred dollars per month, as full compensation for all services. Said deputies shall be allowed traveling expenses while in the discharge of their duties. *As amended, Stats. 1917, 30.*

4219. Gas engines of certain horsepower allowed underground.

SEC. 22. Use of gasoline underground is forbidden, except as follows: Gas engines of not more than eight horsepower may be operated not more than one hundred feet below the surface, providing said engine exhausts into a pipe which extends to the surface; or to a depth of two hundred fifty feet below the surface, providing the exhaust from said engine is attached to a pipe through which air is drawn by means of a suction fan, or otherwise, to the surface. All engines and their method of installation as provided in this section shall be subject to the approval of the inspector of mines of the State of Nevada. *As amended, Stats. 1913, 315.*

4222. A bucket and crosshead used in a mine for lowering and raising employees did not comply with Rev. Laws, 6799, requiring an iron-bonneted safety cage where a shaft is

deeper than 350 feet, in view of this section, as this completely describes what is termed in section 6799 an "iron-bonneted safety cage." *Ryan v. Manhattan Bullfrog Mining Co.*, 38 Nev. 92, 97, 99 (145 P. 907).

4234. Employees not to ride on rim, bail or cable.

SEC. 38. It shall be unlawful for any person to ride upon the rim, bail or cable of a hoisting bucket, cage or skip, and it is hereby made the duty of every operator to post notice of same in all stations and upon all gallows-frames. *As amended, Stats. 1917, 30.*

[The following acts, relating to the operation of mines, should be inserted.]

An Act relating to mines and mining and requiring the keeping open of passageways connecting contiguous mines and giving the right to use the outlet through such contiguous mine in case of necessity and providing a penalty for violation thereof.

Approved March 11, 1913, 53

Underground passages between mines must be maintained.

SECTION 1. It shall be unlawful for any owner, operator or person in charge of any mine to place or cause to be placed any bulkhead or door in any passageway connecting contiguous mines or to refuse to allow the right of use of such outlet through such contiguous mine in case of an accident; *provided*, that nothing in this act shall prevent the maintaining of a door in such connection which can be quickly opened or readily broken in case of an accident.

Tools to aid in escape.

SEC. 2. In all passageways connecting contiguous mines where a door or doors have been erected necessary tools for opening the same shall be kept in a conspicuous place near said doors and not removed for any purpose whatever other than as specified in this act.

Penalties for noncompliance.

SEC. 3. Any owner, operator or person in charge of any mine who violates any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than six months or by both such fine and imprisonment; and each and every day that such owner or operator may continue to violate any of the provisions of this act, shall be considered a separate offense and shall be punishable as such.

Words construed.

SEC. 4. That the words "person," "operator," "owner," and "person in charge," wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of the territories, the laws of any state, or the laws of any foreign country.

An Act relating to the equipping of machinery used for boring or drilling holes in stopes and raises with water-jets or sprays or other means to prevent the escape of dust, compelling the use of same, and providing a penalty for violation thereof.

Approved March 17, 1913, 167

Owner must provide for sprinkling dust.

SECTION 1. It shall be unlawful for any owner, operator or person in charge of any underground mine to cause to be drilled or bored by machinery a hole or holes in any stope or raise in ground that causes dust from

drilling, unless said machinery is equipped with a water-jet or spray or other means equally efficient to prevent the escape of dust; *provided*, that when water-jets or sprays are used water free from pollution with organic or other noxious matter shall be furnished.

Unlawful for miner to drill without sprinkling devices.

SEC. 2. Where machinery used for drilling or boring holes in stopes or raises is equipped as required by section 1 of this act, it shall be unlawful for any person or persons to drill or bore a hole in said stope or raise without using said appliance for the prevention of dust.

Penalties for violation.

SEC. 3. Any person who violates either of the two preceding sections, or any owner, operator or person in charge of any underground mine who hires, contracts with or causes any person to violate the two preceding sections shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail not more than six months or by both such fine and imprisonment.

Words defined.

SEC. 4. That the words "person," "operator," "owner," and "person in charge," wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of the territories, the laws of any state, or the laws of any foreign country.

An Act to require the sprinkling of dusty ore and rock in mines and ore-houses, compelling the installation of devices therefor, and providing a penalty for violation thereof.

Approved March 24, 1913, 305

Sprinklers for dusty ores.

SECTION 1. Every corporation, company, owner or operator of a mine in this state shall equip all chutes from which dusty ore or rock is taken with a sprinkler or other device with which to effectively dampen said ore or rock to prevent the escape of dust into the air during removal, providing that whenever in the opinion of the inspector of mines the installation of said device in any property is impracticable he shall have the power to exempt such property.

Workman to operate device.

SEC. 2. Whenever a sprinkling device is installed at any chute for the purpose of preventing the escape of dust it shall be so placed that it can be operated by the workman loading cars from such chute.

Clean water to be used.

SEC. 3. Every ore-house where dusty ore or rock is sorted, shall be supplied at all times with suitable clean water, which shall be used for the purpose of sprinkling said ore or rock to allay the dust. Nothing in this act shall apply to mines employing less than ten men or to chutes that are loaded in the open air.

Penalties for noncompliance.

SEC. 4. Any corporation, company, owner or operator who fails or refuses to install the sprinkling or watering device hereinabove provided for shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

An Act requiring all persons employed in underground mines or in handling explosives to be able to speak and read the English language, and providing penalties for the violation of this act.

Approved April 1, 1913, 569

Unlawful to employ certain miners.

SECTION 1. It shall be unlawful for any person, firm or corporation to employ in any underground mine in the State of Nevada, or in the handling of explosives either in underground mines or surface mine workings in the State of Nevada, any person or persons who cannot clearly speak and readily understand the English language, or who cannot readily read and understand any sign, notice or list of rules, or directions, printed in the English language in regard to rules of safety in said underground mine, or in the handling of said explosives.

Penalties for violation.

SEC. 2. Any person, firm or corporation, violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred (\$100) dollars, nor more than five hundred (\$500) dollars; or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

An Act requiring that suitable drinking water and receptacles therefor be furnished in underground workings; and providing penalties for the violation thereof.

Approved March 8, 1915, 90

Employers must provide good water.

SECTION 1. Every corporation, company, owner, or operator of a mine or underground workings in this state employing more than five men, shall, during workings hours, provide suitable receptacles containing fresh, clean water for drinking purposes at places convenient to where men are employed in said underground workings. Said receptacles shall be supplied with a substantial cover which may be securely fastened or locked to prevent dust or dirt from entering therein, and shall be so made that the water shall be drawn from a valve or faucet.

Inspector to enforce.

SEC. 2. It shall be the duty of the state inspector of mines to enforce the provisions of this act.

Penalty.

SEC. 3. Any corporation, company, owner, or operator who fails, neglects, or refuses to obey the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

LABOR COMMISSIONER

An Act creating the office of labor commissioner of this state, providing for the appointment of such commissioner and other employees, defining their duties and fixing their compensation, and providing a penalty for the violation of its provisions, and other matters relating thereto.

Approved March 24, 1915, 311

Office created—Who to be—Salary—Clerical help.

SECTION 1. There is hereby created the office of labor commissioner of the State of Nevada, and one member of the Nevada industrial commission,

other than the chairman, shall be designated by the governor to act as ex officio labor commissioner. Said commissioner shall receive as compensation for his services as labor commissioner a salary of fifteen hundred (\$1,500) dollars per annum, payable in monthly installments out of the state treasury of Nevada as other salaries are paid. Said commissioner may employ stenographic or clerical help not to exceed fifteen hundred (\$1,500) dollars per annum, and statistical assistance not to exceed three hundred (\$300) dollars per annum. Said labor commissioner shall be entitled to receive from the state, when travel is necessary in the performance of his official duty, reimbursement for the actual cost of transportation to points within the state over the shortest usually traveled route, and such other expenses as are allowed to other state officers. *As amended, Stats. 1917, 338; 1919, 67.*

To make biennial report.

SEC. 2. Said commissioner shall collect and systematize, and present in biennial reports to the governor and legislature, statistical details relating to labor in the state.

Collect statistics regarding labor.

SEC. 3. Said statistics may be classed as follows:

First—In agriculture.

Second—In mining.

Third—In mechanical and manufacturing industries.

Fourth—In transportation.

Fifth—In clerical and other skilled and unskilled labor not mentioned above.

Sixth—The number, age, sex, and condition of persons employed, the nature of their employment, the extent to which the apprenticeship system prevails in the various industries, the number of hours of labor per day, the average length of time employed per annum, and the net wages received in the industries and employments within the state.

Seventh—The number and condition of the unemployed, their age, sex, and nationality, and the cause of their unemployment.

Eighth—The sanitary conditions of workshops, dwellings, the cost of fuel, rent, food, clothing, and necessities of life; the extent to which labor-saving processes are employed in the displacement of labor.

Ninth—The number and condition of the Chinese and Japanese in this state, and to what extent their labor comes into competition with the other industrial classes of the state.

Tenth—The number and nature of the employment of inmates in state prisons and county jails, and the extent their employment comes into competition with labor outside of these institutions.

Eleventh—The number of hospitals within the state; the number of hospitals maintained through cooperative arrangements between employer and employee; the cost of maintenance thereof; the amount of fees charged for hospital, medical, and surgical attention to employees in the state; the character of the arrangements and maintenance thereof between employer and employee; the sanitary condition and efficiency of such hospitals; the nature of their equipment and the character of services, expert and otherwise, rendered therein.

Twelfth—A description of the different kinds of labor organizations within the state, their objects, purposes, and accomplishments, as near as may be.

Thirteenth—The number of employment bureaus or agencies within the state, character, and nature of their business, requirements, fees, and service.

Fourteenth—All such other information in relation to labor as said commissioner may deem essential to further the objects of this act.

Duties of commissioner.

SEC. 4. Said commissioner shall inform himself of all laws of the state for the protection of life and limb in any of the industries of the state, all laws regulating the hours of labor, the employment of minors, the payment of wages, and all other laws enacted for the protection and benefit of employees; and it shall be the duty of said labor commissioner to enforce all labor laws of the State of Nevada, the enforcement of which is not specifically and exclusively vested in any other officer, board or commission, and whenever after due inquiry he shall be satisfied that any such law has been violated he shall present the facts to the district attorney of the county in which such violation occurred, and it shall be the duty of such district attorney to prosecute the same. *As amended, Stats. 1919, 68.*

Cooperation with other labor departments.

SEC. 5. Said labor commissioner shall cooperate with such bureaus or departments of labor of the national government and other states as may be established.

Public officers to furnish information.

SEC. 6. It shall be the duty of all state, county, and precinct officers to furnish upon written request of said labor commissioner all information in their power necessary to assist in carrying out the objects of this act.

Office hours.

SEC. 7. The office of the bureau shall be open for business from 9 a. m. until 5 o'clock p. m. every day, except Sunday and the holidays observed by other state officers; and the officers shall give to all persons requesting it all needed information which they may possess; *provided*, that no information that is of such a nature that it would be against public policy and against the best interest of the bureau will be given to any one.

Powers and duties of commissioner.

SEC. 8. Said labor commissioner shall have the power to examine witnesses, administer oaths, and take testimony in all matters relating to the duties and requirements of this act, and such testimony shall be taken in some suitable place in the vicinity to which the testimony is applicable. Said labor commissioner may compel the attendance of witnesses, and may issue subpoenas; *provided, however*, that no witness fees shall be paid to any witness unless he be required to testify at a place more than five miles from his place of residence, in which event the witness shall be paid the same fees as a witness before a district court, such payment to be made from the fund appropriated for such purposes in the county in which the testimony is taken and witness examined in the same manner as provided for the payment of witness fees in the district court of such county. Any person duly subpoenaed under the provisions of this section, who shall wilfully refuse or neglect to testify at the time and place named in the subpoena, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than ten days nor more than thirty days, or by both such fine and imprisonment.

Powers to inspect places of employment.

SEC. 9. Said labor commissioner shall have the power to enter any store, foundry, mill, office, workshop, mine, or public or private works at any reasonable time for the purpose of gathering facts and statistics contemplated by this act, and to examine safeguards and methods of protection

from danger to employees; the sanitary conditions of the buildings and surroundings, and make a record thereof; and any owner, corporation, occupant, or officer who shall refuse such entry to said labor commissioner, his officers or agents, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than ten days nor more than thirty days, or by both such fine and imprisonment.

Bulletins to be printed.

SEC. 10. The labor commissioner is hereby authorized, with the approval of the board of examiners, to compile and issue such bulletins pertaining to labor and industries of the state as he may deem necessary, and such bulletins, when approved for printing and distribution, shall be printed at the state printing office.

Forms and blanks.

SEC. 11. Said labor commissioner shall prepare forms and blanks for the purpose of gathering the information and statistics required by this act, and may require any person, firm, or corporation to give the information and statistical detail designated in such forms, and any person, firm, or corporation who shall refuse to furnish such detail and statistics in the form required shall be guilty of a misdemeanor, and upon conviction thereof may be fined not less than one hundred dollars nor more than five hundred dollars.

Printing at state printing office.

SEC. 12. All forms, blanks, envelopes, letterheads, circulars, bulletins and reports required to be printed by said labor commissioner shall be printed at the state printing office in the same manner and under the same regulations which are specified in an act entitled "An act to designate and authorize the work to be done in the state printing office," approved March 5, 1909. *As amended, Stats. 1919, 68.*

District attorney to prosecute.

SEC. 13. It shall be the duty of the district attorneys of the several counties, upon the complaint of the labor commissioner, to prosecute all violations of law which may be reported to said district attorney by the labor commissioner.

SEC. 14. [Carrying appropriation; omitted.]

Office at capitol.

SEC. 15. The labor commissioner shall be provided with properly furnished offices at the capitol in Carson City, Nevada.

4240-48. Repealed, Stats. 1913, 182.

ORE SAMPLER

An Act creating the office of state ore sampler and providing for the appointment of such officer, defining his duties, and other matters relating thereto.

Approved March 27, 1919, 259

Office created.

SECTION 1. The office of state ore sampler for the State of Nevada is hereby created.

Who to be.

SEC. 2. The director of the state mining laboratory shall be state ore sampler and shall hold office at the pleasure of the governor.

Salary—Bond.

SEC. 3. The state ore sampler shall receive as full compensation for his services a salary of twelve hundred dollars (\$1,200) per annum and his necessary traveling expenses when traveling in discharge of his official duties, and necessary expenses for chemist's salary, deputy hire, postage, stationery, printing, and other office expenses; *provided*, said compensation and all expenses except deputy hire shall be paid as the salary and expenses of other state officers are paid. Before entering upon the discharge of his duties, he shall file an official bond in the sum of ten thousand (\$10,000) dollars, conditioned for the faithful performance of the duties of said office, in form and manner as other official bonds of state officers.

Not to be interested in mining or milling—Oath.

SEC. 4. The state ore sampler shall not, at any time during his term of office, be an owner, officer, director, or employee of any mining corporation, smelter, sampler, or mill which purchases ore or does custom work, and he shall not hold stock or bonds of or in any smelter, sampler, or mill purchasing ore or doing custom work. The state ore sampler, his chemist, and his deputies shall each take and subscribe to the following oath:

State of Nevada, }
County of, } ss.

I, _____, of _____ County, do solemnly swear that I will do and perform each and every duty required of me as (name of office) _____, for the State of Nevada; that I will never at any time divulge or disclose to any person or persons, directly or indirectly, under any circumstances, any information relative to assays, tonnage reports or other data secured or received by me as (name of office) _____, except to the parties directly interested or by their express permission. So help me God.

Nothing in this oath shall be construed to prevent said officer from making statistical reports as required by law.

Office at university.

SEC. 5. The state ore sampler shall be provided with a properly furnished office at the University of Nevada in which he shall carefully keep a complete record of all his official acts. The equipment and records of the state assayer and inspector for the State of Nevada shall be the property of the state.

Reports to be made.

SEC. 6. It is hereby made the duty of the owner, lessor, lessee, agent, manager or other person in charge of each and every sampler, ore purchaser and custom mill of any kind or character in Nevada, to forward monthly on the first day of each and every month to the state ore sampler, a statement of the tonnage of ores received other than those produced from its own property and the camp from which shipped.

Duties—Charges go, where—State treasurer custodian—Daily reports.

SEC. 7. It shall be the duty of the state ore sampler to take charge at the destination thereof of all ores consigned to samplers, custom mills, or other purchasers of Nevada ores, whenever requested so to do by the owner or forwarder of such shipments. The state ore sampler shall sample such ores taken charge of with the purchaser or independently as he may see fit and at any and all times he may see fit and samples taken

by him shall be assayed in the state mining laboratory. The shipper or owner of such ore shall pay the State of Nevada the sum of twenty-five (25) cents the ton for the services as rendered in taking charge of, sampling, and assaying the said ores, and the purchaser of such ores shall withhold the amount so due the State of Nevada from the money due said shipper as a prior charge and forward the sum so withheld to the state treasurer of Nevada to be placed in a fund to be known as the "State Ore Sampler Fund." The state ore sampler shall forward immediately to the shipper the assays and result of sampling done by him. The purchaser shall report the result of his own assays to the state ore sampler, and providing the assays of the purchaser are lower than those of the state ore sampler by an unreasonable amount, the state ore sampler shall call for an umpire in the regular manner. He shall also do whatever other things are necessary and requisite to protect the rights and interests in the ore of the consignor; *provided*, that if the consignment sampled amounts to less than fifty (50) tons and the cost of sampling exceeds twenty-five (25) cents per ton, the consignor shall be required to pay the actual costs of sampling; *and provided further*, that if the consignment sampled amounts to more than fifty (50) tons and the cost of sampling is less than twenty-five (25) cents per ton, the state ore sampler may fix a lower rate which shall be applicable to all shipments of the same general character to the same purchasing point. He shall endeavor to secure favorable rates upon ores upon the request of a shipper or shippers. The state ore sampler shall also make daily reports to the state treasurer for checking purposes.

Residue reverts to fund.

SEC. 8. All moneys remaining in the "State Assayer and Inspector Fund," shall be placed by the state treasurer in a separate fund to be known as the "State Ore Sampler Fund," and all moneys received by the state treasurer for taking charge of and sampling ores shall be deposited in this fund, and paid out as herein provided.

Chemist—Salary.

SEC. 9. The state ore sampler may employ a chemist as an assistant at a salary not to exceed one hundred (\$100) dollars the month.

Deputies.

SEC. 10. The state ore sampler may appoint deputies as necessary, at a wage not to exceed five (\$5) dollars the day and traveling expenses; *provided*, said deputies shall be paid out of the fund known as the "State Ore Sampler Fund," in the state treasury, and no deputy hire shall be incurred unless there are sufficient funds on hand to pay the per diem and expenses in said fund.

Words and phrases defined.

SEC. 11. The words and phrases of this act, unless such construction be inconsistent with the context, shall be construed as follows:

(a) The word "sampler," any individual, copartnership, company, association or corporation buying, purchasing, accepting consignments of or receiving for delivery any mineral-bearing ore from any mine or mines not owned and operated by it.

(b) The words "custom mill" shall include any mill, smelter or any other plant used for the reduction of ores and extracting the mineral therefrom, which treats and reduces ores other than those produced and extracted from a property owned and operated wholly by it.

(c) The words "purchaser" and "ore purchaser" include any individual,

copartnership, company, association and corporation which purchases, buys, accepts on consignment, or for delivery, any mineral-bearing ores.

SEC. 12. [Carrying appropriation; omitted.]

Penalties.

SEC. 13. A violation of any provision of this act shall be a misdemeanor and punishable with a fine of not less than twenty-five (\$25) dollars, nor more than five hundred (\$500) dollars, or imprisonment in the county jail not to exceed four (4) months.

Each section and part independent.

SEC. 14. Each section of this act and every part of each section is hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to nor affect any other section or any part thereof.

SECRETARY OF STATE

An Act to provide a fee bill for the office of secretary of state.

Approved March 24, 1913, 277

Various fees to be collected—Fees from corporations—Commissions—Certain persons exempt.

SECTION 1. On filing any certificate or articles or other paper relative to corporations in the office of the secretary of state, the following fees and taxes shall be paid to the secretary of state for the use of the state: For certificate or articles of incorporation, ten (10) cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five (\$25) dollars; consolidation and merger of corporations, ten (10) cents for each thousand dollars capital authorized, beyond the total authorized capital of the corporations merged or consolidated, but in no case less than ten dollars; increase of capital stock, ten (10) cents for each thousand dollars of the total increase authorized, but in no case less than ten dollars; extension or renewal of corporate existence of any corporation, one-half that required for the original certificate or articles of incorporation by this act; dissolution of corporation, change of nature of business, amended articles or certificate of incorporation or organization (other than those authorizing increase of capital stock), decrease of capital stock, the increase or decrease of par value or number of shares, ten dollars; for filing list of officers and directors or trustees and name of agent in charge of principal office, one dollar; notice of removal of principal place of business, other than by amendment, one dollar; for certifying to copy of articles of incorporation, where copy is furnished, five dollars; for certifying to copy of amendment to articles of incorporation, where copy is furnished, five dollars; for certifying to authorized printed copy of the general corporation law, as compiled by the secretary of state, five dollars; for all certificates not hereby provided for, five dollars; *provided*, that no fees shall be required to be paid by any religious, or charitable society or educational association having no capital stock; *and provided further*, that foreign incorporations shall pay the same fees to the secretary of state as are required to be paid by corporations organized under the laws of this state.

Each and every civil officer of this state, except commissioners of deeds and notaries public, shall, at the time of the issuance of his commission, and before entering upon the duties of his office, pay to the secretary of state the sum of five dollars; for a written copy of any law, joint resolution, transcript of record, or other paper on file or of record in this office,

twenty cents per folio; for certifying to any such copy and use of state seal, five dollars for each impression; for attesting extradition papers, five dollars for each time the state seal is necessarily used; for filing and recording each official bond, five dollars; for filing and recording trademarks and names, five dollars; for each passport and other document signed by the governor and attested by the secretary of state, five dollars; for each commission as notary public, ten dollars; for each commission as commissioner of deeds, ten dollars; for each commission signed by the governor and attested by the secretary of state, other than notaries public and commissioner of deeds, five dollars; for each commission issued by the governor to staff or line officers of the militia of the State of Nevada, no charge; all commissions issued to directors of the Nevada state agricultural society, or to any agricultural society now organized, or that may be hereafter organized, shall be free; for searching records or archives of the state, and other records and documents kept in his office, he shall charge a reasonable fee. For each certificate of qualification, issued to surety companies, five dollars.

Fees to library fund.

SEC. 2. All fees collected in the office of secretary of state shall be paid into the state treasury for the use and benefit of the library fund.

Fees collected in all cases.

SEC. 3. The secretary of state is required to collect the fees above specified in all cases, whether the services mentioned therein are rendered to a person, firm, corporation, association or county, unless herein excepted.

An Act relating to the compilation, printing, and distribution of lists of registered motor vehicles.

Approved March 10, 1919, 51

Secretary of state to issue quarterly lists.

SECTION 1. It shall be the duty of the secretary of state to compile quarterly a list of registered motor vehicles, which shall be arranged numerically or alphabetically, and to contain the name of every owner, with his place of residence, together with the license number and make of all such vehicles. The list so prepared shall be printed by the state printer, and the secretary of state shall distribute printed copies thereof without charge to the various officials whose duties are connected with the enforcement of the license tax of motor vehicles.

List to be printed.

SEC. 2. The state printer shall print five hundred (500) copies of the list prepared pursuant to section 1 of this act, and the said copies shall be delivered by him to the secretary of state for free distribution. The cost of said printing shall be paid from the automobile expense fund.

STATE POLICE

4294-8. New act substituted as follows:

An Act to amend an act entitled "An act creating the office of commissary of the Nevada state police, prescribing his duties, fixing his compensation, and other matters relating thereto," approved February 8, 1908, as amended, Stats. 1909, 217.

Approved March 10, 1917, 59

Office created.

SECTION 1. The office of commissary of the Nevada state police is hereby created.

Superintendent made commissary.

SEC. 2. The superintendent of Nevada state police is hereby made ex officio commissary of the Nevada state police.

Duties.

SEC. 3. It shall be the duty of the commissary of the Nevada state police to purchase all arms, ammunition, equipment, provisions, uniforms, badges, and all other necessary supplies required to be furnished to said Nevada state police, and no supplies of any kind shall be furnished to, or purchased for the use of, the Nevada state police, except upon requisition therefor issued by the commissary, and approved by the governor. *As amended, Stats. 1909, 217.*

Bills, how paid.

SEC. 4. All bills for supplies purchased in accordance with section 3 hereof shall be presented to the state board of examiners, to be audited, examined, and allowed, and shall be paid out of any funds now or hereafter appropriated for the maintenance of the said Nevada state police.

No salary.

SEC. 5. The commissary of said Nevada state police shall receive no salary for his services. He shall, however, be allowed his necessary expenses when traveling upon business connected with the duties of his office; when the same shall have been audited, examined, and allowed by the state board of examiners, said expenses shall be paid out of any fund which may now or hereafter be appropriated for the maintenance of the said Nevada state police.

An Act supplementary to an act entitled "An act to provide for the creation, organization, and maintenance of the Nevada state police, prescribing the powers and duties of the officers and members thereof in maintaining peace, order, and quiet in the State of Nevada, fixing their compensation, providing certain penalties, and other matters relating thereto, making an appropriation therefor, and repealing all acts and parts of acts in conflict therewith," approved January 29, 1908; and making the superintendent of the Nevada state police ex officio warden of the state prison; fixing his salary; providing for an acting warden during vacancy or absence of the superintendent, and repealing all acts and parts of acts in conflict herewith.

Approved March 29, 1915, 452

Superintendent to be ex officio warden.

SECTION 1. From and after the first day of April, A. D. 1915, the superintendent of the Nevada state police shall be ex officio the warden of the state prison of this state, and shall hold office until his successor is chosen and qualified. He shall, as such ex officio warden, and in addition to his bond as superintendent of the Nevada state police, execute a bond in such sum as the state board of prison commissioners shall designate, not exceeding the sum of fifteen thousand dollars, for the faithful discharge of his duties as warden, which bond shall be given to the State of Nevada, approved by the chief justice of the supreme court, and filed with the secretary of state.

Captain of guard acting warden, when.

SEC. 2. In the event of vacancy in the office of superintendent of Nevada state police, by death, resignation, or otherwise, such vacancy shall be filled as now provided by law, and until the filling of such vacancy,

and during any absence of the warden, the captain of the guard of the state prison shall be acting warden thereof without any increase in salary.

Salary of superintendent.

SEC. 3. From and after the first day of April, A. D. 1915, the salary of the superintendent of Nevada state police and ex officio warden of the state prison shall be, and the same is hereby fixed, at thirty-six hundred (\$3,600) dollars per annum, in full compensation for all his services as such superintendent and warden, with mileage and expense allowances as now provided by law when engaged in the discharge of his duties, said salary to be payable in monthly installments out of the general fund in the state treasury, in the same manner as other state officers are paid.

SUPERINTENDENT OF STATE PRINTING

4314. Idem—Pamphlets and leaflets.

SEC. 2. Unless otherwise specially authorized by legislative action, the following pamphlets, bulletins and leaflets shall be printed: Annual register of the University of Nevada, annual catalogue of the Nevada state fair association, Nevada mining laws, Nevada land laws, Nevada election laws, Nevada official election returns, general corporation laws, foreign corporation laws, minutes of meetings of state board of assessors, state school laws, monthly bulletin, not to exceed 16 pages, of the agricultural experiment station, fish and game law, the pharmacy law, list of registered physicians, insurance laws, ruled work for insurance commissioner, and necessary briefs, transcripts and other legal work for the railroad commission. *As amended, Stats. 1913, 377.*

STATE PRINTING OFFICE

4330. Duties of superintendent of state printing—Legislative printing and binding—Printing for state officers and boards—Semimonthly pay-day.

SEC. 5. The duties of the superintendent of state printing shall be as follows: He shall have the entire charge and superintendence of the state printing, and all matters pertaining to his office. He shall take charge of and be responsible for all manuscripts or other matter which may be placed in his hands to be printed, and shall cause the same to be promptly executed. He shall receive from the senate or assembly all matter ordered by either house to be printed and bound, or either printed or bound, and shall keep a record of the same, and of the order in which it may be received, and when the work shall have been executed he shall deliver the finished sheets, or volumes, to the sergeant-at-arms of either house, as the case may be, or any department authorized to receive them. He shall receive and promptly execute all orders for printing required to be done by the various state officers, boards, and commissions. He shall employ such compositors, machine operators, pressmen, or assistants, as the exigency of the work may from time to time require, and may at any time discharge such employees; *provided*, that at no time shall he pay said compositors, machine operators, pressmen, or assistants a higher rate of wages than is recognized by the employing printers of the State of Nevada, or the nature of the employment may require. He shall at no time employ more compositors, machine operators, pressmen, or assistants than the necessities of the state printing may require, and he shall not permit any other than state work to be done in the state printing office. On the first business day after the first and fifteenth days of each month the superintendent of state printing shall submit to the state board of examiners a statement of

the salary or wages then due each employee for the semimonthly period immediately preceding. The state board of examiners shall then immediately consider said pay-roll, and after its approval by the board, or a majority thereof, the state controller shall draw his warrants on the state treasurer in payment of said salaries or wages in the same manner that other salaries are paid. The superintendent of state printing shall biennially, prior to the meeting of the legislature, make a report to the governor, embracing a record of the complete transactions of his office. *As amended, Stats. 1917, 196.*

4334. Statutes—Number of copies.

SEC. 14. There shall be printed of the statutes of each legislature twelve hundred copies. Eight hundred copies shall be bound in buckram or law sheep, and four hundred copies shall remain unbound until such time as they may be needed. The bound volumes shall contain the laws, resolutions and memorials passed at each legislative session, the report of the state treasurer, the constitution of the United States, and the constitution of the State of Nevada. No other report or thing whatever shall be bound therewith. *As amended, Stats. 1917, 197.*

4335. Journals and appendix—Number of copies.

SEC. 15. The journals and appendix of the two houses of the legislature shall be printed, and there shall be five hundred copies of the journals and one hundred copies of the appendix bound in the same style as those of the twenty-seventh session; and each member of the legislature of which such journals are the record shall be entitled to one copy of the same; that is to say, each senator shall have a copy of the senate and assembly journals, and each assemblyman shall have a copy of the assembly and senate journals; and the journal of each house shall be bound separately. *As amended, Stats. 1917, 197.*

Must be practical printer.

SEC. 22. No person other than a practical printer shall be eligible to the office of superintendent of state printing. *Added, Stats. 1915, 83.*

4340. Repealed, Stats. 1917, 197.

SURVEYOR-GENERAL

An Act regulating the fees of the office of surveyor-general, and other matters relating thereto.

Approved March 15, 1915, 147

Disposition of fees.

SECTION 1. The surveyor-general shall charge the following fees:

For making a certified copy of a contract to purchase state lands and for the renewal of a contract, one dollar each.

For township diagrams showing forfeited lands for sale and price of same, when the number exceeds five in an order, twenty cents each.

For a township diagram showing state entries only, fifty cents each.

For a township plat showing entries, names of entrymen and agents, kinds of entries, also forfeited lands for sale, two dollars each plus ten cents per name for each entryman.

For a complete tracing of a township plat showing entries, forfeited lands for sale, names of entrymen and agents, with number and date of entry, kinds of entries, topography, etc., five dollars per township plat plus ten cents per name for each entryman.

For making a certified copy of any record or instrument not included in

the above, twenty cents per folio for the original, and five cents per folio for each carbon copy.

All fees charged and collected under this act shall be accounted for by the surveyor-general and paid into the state treasury for the state school fund. *As amended, Stats. 1917, 73.*

STATE TREASURER

4370. Similar section (Cutting, 1994) cited, *State ex rel. Mills v. McMillan*, 34 Nev. 272 (117 P. 506).

4374. Cited, *State ex rel. Kendall v. Cole*, 38 Nev. 238 (148 P. 551).

4375. Cited, *State ex rel. Kendall v. Cole*, 38 Nev. 238 (148 P. 551).

An Act to authorize the deposit of state moneys in banks in this state, and to repeal all acts and parts of acts in conflict with this act.

Approved March 15, 1913, 127

Money may be loaned banks—Provisos.

SECTION 1. All moneys under the control of the state treasurer, belonging to the state, may be deposited by the state treasurer to the credit of the state in such state or national bank, or banks, in the state as the treasurer, with the approval of the state board of examiners, shall select for the safe keeping of such deposits, and any sum so deposited shall be deemed to be in the state treasury; *and provided further*, that such depositary bank or banks be selected from those agreeing to pay interest at the rate of two and one-half per cent per annum, for such deposits; *provided*, that not more than one-tenth of the aggregate amount of state moneys available for deposit and on deposit shall be deposited in any one bank; *and provided further*, that such deposit shall not exceed seventy-five per cent of the paid-up capital, exclusive of reserve and surplus, of any depositary bank. The expense of transportation of moneys to and from the state treasury to such depositaries shall be borne by such depositaries. Said deposits with interest thereon, shall be subject to withdrawal at any time upon the demand of the state treasurer.

Interest rate.

SEC. 2. The interest to be paid by any such depositary bank shall be on the average daily balances of the state moneys kept on deposit therewith, and shall be paid and credited to the state monthly on the first day of each and every month, and such interest shall accrue to the general fund of the state treasury; *provided*, that if any moneys belonging to the state school funds shall at any time be deposited under the provisions of this act, the interest thereon shall be paid into such fund.

How secured.

SEC. 3. For the security of the funds deposited by the state treasurer under the provisions of this act, there shall be deposited with the treasurer bonds of the United States, or of this state, or of any county or municipality or school district within this state, which bonds shall be approved by the treasurer and board of examiners, to an amount in value at least fifteen per cent in excess of the amount of the deposit with such bank or banks; and if, in any case, or any time such bonds are not deemed satisfactory security to the treasurer and board of examiners, they may require such additional security as may be satisfactory to them. Said bonds, or any part thereof, may be withdrawn on the written consent of the treasurer and board of examiners; *provided*, that a sufficient amount of said bonds to secure said deposits shall always be kept in the treasury; and in the event that said bank or banks of deposit shall fail to pay such

deposits or any part thereof on the demand of the state treasurer, then it shall be the duty of the state treasurer forthwith to convert said bonds into money and to disburse the same according to law.

Duties of state treasurer.

SEC. 4. The treasurer shall take from such depositary or depositaries a written contract, in duplicate, setting forth the conditions and terms upon which the funds of the state are deposited therewith, one of which shall be filed with the controller. One provision of said contract shall be that each depositary shall at the end of each month render to the state treasurer a statement in duplicate showing the daily balances or amount of money of the state held by it during the month and the amount of accrued interest thereon separately, one of which shall be filed by the treasurer with the controller. The treasurer shall annually on the first day of July furnish each depositary bank with a statement showing the amount and description of the bonds on deposit with him by such bank to secure state deposits.

Nonliability of state treasurer.

SEC. 5. The state treasurer shall not be responsible for any moneys deposited in a bank or in banks under the provisions of this act while the same remain there deposited with the consent of the board of examiners; but the treasurer shall be chargeable with the safe keeping, management and disbursement of the bonds deposited with him as security for deposits of state moneys, and with interest thereon, and the proceeds of any sale under the provisions of this act.

State treasurer to take receipt.

SEC. 6. At the time of depositing state money in any bank, designated as a depositary, the state treasurer shall take and preserve a receipt therefor, stating the amount deposited and referring to the contract made between the depositary banks and the treasurer. The moneys so deposited may be drawn out by the check or order of the state treasurer.

State treasurer to publish list of money loaned.

SEC. 7. The state treasurer shall, immediately after the second Monday of January and July of each year, cause to be published in a newspaper of general circulation published in the capital city, a statement showing the amount of state funds held by each and every state depositary on the first day of said month, and the value and description of bonds held by the treasurer as security for each of such deposits.

4376-89. Repealed, Stats. 1913, 456.

See "An Act regulating the practice of veterinary medicine, surgery, and dentistry, etc., Stats. 1919, 25, post.

SALARIES

4393. Per diem of senators and assemblymen—Stationery allowance.

SEC. 7. To state senators and members of the assembly, ten dollars per day for each day of service; *provided*, the total amount so paid shall not exceed the sum of six hundred dollars at any regular session, and ten cents per mile for each mile actually traveled in going to and returning from the place of meeting, which said mileage shall, however, be computed, in all cases, upon the shortest practical routes to the said place of meeting; *provided*, that each member may be allowed not exceeding twenty dollars for the purchase of newspapers and stationery during the session. *As amended, Stats. 1915, 147.*

4395. Cited, *State ex rel. Fowler v. Eggers*, 33 Nev. 536 (112 P. 699).

4396. Salary of deputy attorney-general.

SEC. 2. The salary of one deputy attorney-general is hereby fixed at three thousand (\$3,000) dollars per annum, payable out of the general fund in the same manner as salaries of other state officers are paid. *As amended, Stats. 1919, 128.*

Cited, *State ex rel. Abel v. Eggers*, 36 Nev. 377 (136 P. 100).

An Act regulating appropriations and to prevent state officials and the chiefs or heads of boards, bureaus, commissions, departments, or institutions of the State of Nevada from exceeding the appropriations made by the legislature for their support, or for the support and benefit of such boards, bureaus, commissions, departments, and institutions.

Approved March 18, 1915, 221

Appropriations must be applied specifically.

SECTION 1. The sums appropriated for the various branches of expenditure in the public service of the state shall be applied solely to the objects for which they are respectively made, and for no others.

Deficiency created, how.

SEC. 2. It shall be unlawful for any state official, or any chairman, chief, or head of any board, bureau, commission, department, or institution of the State of Nevada to incur any outlay or expenditure in excess of the appropriation or appropriations made by the legislature for the support, use, and benefit of such official, board, bureau, commission, department, or institution, except in cases of extreme emergency, and then only by the unanimous vote of the state board of examiners.

Penalty.

SEC. 3. Any person violating the provisions of this act shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than fifty dollars nor more than three hundred dollars.

An Act fixing the allowance for expenses of any state officer, commissioner, or other employee while traveling, or at destination, on official business.

Approved February 13, 1915, 19

Allowance for expenses—Exception.

SECTION 1. The maximum amount of expense money per day for personal uses, allowed to any individual officer or commissioner, or other employee of the state, while traveling, or at his destination, on official business for the State of Nevada, shall not exceed the sum of five dollars per day; *provided*, that nothing in this act shall be construed to include the cost of seats or sleeping-berths in railway trains, railroad fare, stage fare, automobile hire or fare, team or horse hire, bus, or street-car fare, or transportation charges of any kind whatsoever.

Vouchers required.

SEC. 2. Paid vouchers for each item must accompany each expense account when presented to the board of examiners for approval.

An Act regulating the salaries of certain state officers of the State of Nevada.

Approved March 22, 1913, 244

Salaries of state officers.

SECTION 1. From and after the first Monday in January, A. D. 1915, the following annual salaries shall be paid to the various state officers of

this state, at the time and in the manner prescribed by law: To the governor, seven thousand (\$7,000) dollars; to the secretary of state, thirty-six hundred (\$3,600) dollars; to the state controller, thirty-six hundred (\$3,600) dollars; to the state treasurer, thirty-six hundred (\$3,600) dollars; to the lieutenant-governor, thirty-six hundred (\$3,600) dollars; to the attorney-general, thirty-six hundred (\$3,600) dollars; to the surveyor-general, thirty-six hundred (\$3,600) dollars; to the superintendent of public instruction, thirty-six hundred (\$3,600) dollars; to the clerk of the supreme court, three thousand (\$3,000) dollars; to the superintendent of state printing, thirty-six hundred (\$3,600) dollars; to the inspector of mines, thirty-six hundred (\$3,600) dollars.

Full payment for all services.

SEC. 2. The foregoing sums shall be in full payment of all duties now or hereafter required of such officers not only for the ordinary duties of such officers but for all other duties required of such officers in any manner whatever.

An Act regulating the salaries of certain state officers of the State of Nevada.

Approved March 26, 1913, 404

Salaries of certain appointive state officers.

SECTION 1. From and after the first Monday of January, A. D. nineteen hundred and fifteen, the following annual salaries shall be paid to the various state officers of this state, at the time and in the manner prescribed by law:

To the bank examiner, four thousand (\$4,000) dollars; to the state engineer, thirty-six hundred (\$3,600) dollars; to the chief engineer of the public service commission of Nevada, twenty-five hundred (\$2,500) dollars; to the state license and bullion tax agent, twenty-five hundred (\$2,500) dollars; to the warden of the Nevada state prison, three thousand (\$3,000) dollars.

Relator was employed under Rev. Laws, 4530, as expert engineer of the public service commission at a salary of \$3,600 per annum; after the enactment of this act, the state controller refused to draw his warrant in relator's favor at the rate of \$3,600 per year, but only at the rate of \$2,500. Relator sought mandamus, contending that this act, as an act amending the public service act, violated Const. art. 4, sec. 17. Held, that this act was valid, it not purporting to be an amendatory act, but clearly an independent act complete in itself, which was not embraced in the constitutional requirement, and might alter the prior statute without referring to it. State ex rel. Freudenberger v. Cole, 36 Nev. 488, 490, 491, 494 (151 P. 944).

An Act fixing the salaries and compensation of the deputy state controller, deputy state treasurer, and deputy surveyor-general, and repealing all acts and parts of acts in conflict herewith.

Approved March 18, 1915, 224

Salaries of certain deputies.

SECTION 1. From and after the passage of this act the deputy state controller shall receive a salary of twenty-four hundred (\$2,400) dollars per annum; the deputy state treasurer shall receive a salary of twenty-four hundred (\$2,400) dollars per annum; and the deputy surveyor-general shall receive a salary of twenty-four hundred (\$2,400) dollars per annum, payable out of the state school fund. All the foregoing salaries shall be paid in equal monthly installments, as the salaries of other state officers are paid.

An Act fixing the salaries of certain employees in the state government; creating the position of stenographer in the office of the governor, and fixing the salary thereof.

Approved March 22, 1919, 128

Salaries of clerks, typists, stenographers, and supreme court reporter.

SECTION 1. The following employees of the state government holding positions that have been created by law, shall receive the following salaries:

Clerk in office of the governor, \$1,500 annually.

Two typists in office of secretary of state, who shall each receive a salary of \$1,500 annually.

One typist in office of attorney-general, \$1,500 annually.

Two clerks and typists in office of state controller and insurance commissioner, who shall each receive a salary of \$1,500 annually.

One clerk in office of state treasurer, \$1,500 annually.

One typist in office of surveyor-general, \$1,500 annually.

One typist in office of superintendent of public instruction, \$1,500 annually.

One bookkeeper in office of superintendent of state printing, \$1,500 annually.

One assistant librarian, \$1,500 annually.

One stenographer in the office of the clerk of the supreme court, \$1,500 annually.

The official reporter of the supreme court, in full for his services as such and reporter of the decisions thereof, the sum of twenty-four hundred dollars (\$2,400) per annum.

Stenographer for governor.

SEC. 2. The position of stenographer in the office of the governor is hereby created. The salary of said stenographer shall be fifteen hundred (\$1,500) dollars annually.

Salaries payable monthly.

SEC. 3. The salaries fixed in this act shall be paid in monthly installments out of any money in the state treasury not otherwise appropriated, and the state controller shall draw his warrants and the state treasurer shall pay the same accordingly.

Only positions named affected.

SEC. 4. This act shall not be construed to affect any deputy or employee in the state government not herein designated.

STATE BOARDS

BOARD OF ACCOUNTANCY

An Act to create a state board of accountancy and prescribe its powers and duties; to provide for the examination of and issuance of certificates to applicants, with the designation of certified public accountants, to provide for examination of state, county, and city accounts, and to provide the grade of penalty for violations of the provisions hereof.

Approved March 24, 1913, 272

Board created—Qualifications of members.

SECTION 1. Within thirty days after the approval of this act the governor shall appoint three persons, at least two of whom shall be competent and skilled accountants who shall have been in practice as such in

this state for not less than one year, to constitute and serve as a state board of accountancy. The members of such board shall, within thirty days after their appointment, take and subscribe to the oath of office as prescribed by the laws of Nevada, and file the same with the secretary of state. They shall hold office for three years, and until their successors are appointed and qualified; save and except that one of the members of the board first to be appointed under this act shall hold office for one year; one for two years, and one for three years. Any vacancies that may occur from any cause shall be filled by the governor for the unexpired term; *provided*, that all appointments made after the first year must be made from the roll of certificates issued and on file in the office of the secretary of state.

Office in Reno—Powers and duties.

SEC. 2. The state board of accountancy shall have its principal office in the city of Reno, and its powers and duties shall be as follows:

1. To formulate rules for the government of the board and for the examination of and granting of certificates of qualification to persons applying therefor;

2. To hold written examinations of applicants for such certificates, at least semiannually, at such places as circumstances and applications may warrant;

3. To grant certificates of qualification to such applicants as may, upon examination, be found qualified in theory of accounts, practical accounting, auditing, and commercial law to practice as certified public accountants;

4. To charge and collect from all applicants such fee, not exceeding twenty-five dollars, as may be necessary to meet the expenses of examination, issuance of certificates and conducting its office; *provided*, that all such expenses, including not exceeding ten dollars per day for each member while attending the sessions of the board or conducting examinations, must be paid from the current receipts, and no portion thereof shall ever be paid from the state treasury;

5. To require the annual renewal of all such certificates, and to collect therefor a renewal fee of not exceeding ten dollars;

6. To revoke for cause any such certificate, after written notice to the holder, and a hearing being had thereon;

7. To report annually to the secretary of state, on or before the first day of December, all such certificates issued or renewed, together with a detailed statement of receipts and disbursements; *provided*, that any balance remaining in excess of the expenses incurred, may be retained by the board and used in defraying the future expenses thereof;

8. The board may in its discretion, under regulations provided by its rules, waive the examination of applicants possessing the qualifications mentioned in section 3, who shall have been for more than one year prior to the passage of this act practicing in this state as a public accountant on their own account, who shall in writing, apply for such certificates within six months.

Certified public accountant, who may be.

SEC. 3. Any citizen of the United States, or any person who has duly declared his intention of becoming such citizen, residing and doing business in this state, being over the age of twenty-one years and of good moral character, may apply to the state board of accountancy for examination under its rules, and for the issuance to him of a certificate of qualification to practice as a certified public accountant, and upon the issuance and receipt of such certificate, and during the period of its existence, or of any renewal thereof, he shall be styled and known as a certified public

accountant or expert of accounts, and no other person shall be permitted to assume and use such title or to use any words, letters or figures to indicate that the person using the same is a certified public accountant.

Certified public accountants, who may be.

SEC. 3A. Any citizen of the United States, or any person who has declared his intention of becoming such citizen, being over the age of twenty-one years and of good moral character, who has complied with the rules and regulations of the board appertaining to such cases, and who holds a valid and unrevoked certificate as a certified public accountant, or the equivalent thereof, issued by or under the authority of any other state of the United States, or the District of Columbia, or any territory of the United States, or by or under the authority of a foreign nation, when the board shall be satisfied that their standards and requirements for a certificate as a certified public accountant are substantially equivalent to those established by the act of which this act is an amendment, may, at the discretion of the board, receive a certificate as a certified public accountant, and such person may thereafter practice as a certified public accountant and assume and use the name, title, and style of "Certified Public Accountant," or any abbreviation or abbreviations thereof, in the State of Nevada; *provided, however*, that such other state, territory or nation extends similar privileges to certified public accountants of the State of Nevada. *Added, Stats. 1917, 346.*

SEC. 4. Repealed, Stats. 1917, 59.

Penalty for violation.

SEC. 5. Any violation of the provisions of this act shall be deemed as a misdemeanor.

CAPITOL COMMISSIONERS

4420. Salaries of state capitol employees.

SEC. 10. Said board is authorized to employ an engineer at a salary of one hundred and forty dollars per month, and two janitors, one gardener, and two watchmen at a salary of one hundred and twenty-five dollars per month each; *provided*, that the watchman whose duty it shall be to guard the vault of the state treasury shall be designated by the state treasurer. Said board is also empowered to employ such additional assistance as necessity may require. Said employees shall perform such duties as said board may direct, and may be transferred from one branch of employment to another, and they shall take care of all the buildings, grounds and offices under the control of said board. *As amended. Stats. 1917, 46; 1919, 127.*

CEMENT PLANT AND STATE SMELTER

An Act to provide for appointment of a commission to investigate the feasibility of the construction and equipment of a cement plant and state smelter for the State of Nevada; making an appropriation for the expenses of said commission and providing for the issuance of certain bonds.

Approved March 26, 1919, 193

Commission to be appointed, how.

SECTION 1. The governor of the State of Nevada is hereby authorized and empowered to appoint a commission of three (3) persons and fix their compensation to investigate the feasibility of the construction and equipment for the State of Nevada of a cement plant for the production of cement and also the feasibility of establishing a state smelter.

SEC. 2. [Carrying appropriation; omitted.]

If reported feasible, bonds to be issued.

SEC. 3. The state board of examiners is hereby authorized, directed and empowered to prepare and issue bonds of the State of Nevada, in the sum of one hundred thousand (\$100,000) dollars, the proceeds from the sale of which bonds are hereby appropriated for the purpose of constructing and equipping such cement plant, should said commission hereby created decide that the same is feasible. Said bonds shall be in denominations of one thousand (\$1,000) dollars each, payable in gold coin of the United States, and shall be numbered serially, and when retired shall be retired in order of their issuance. Said bonds shall be signed by the governor and endorsed by the state treasurer, and countersigned by the state controller, and authenticated by the great seal of the state. Said bonds shall bear interest at the rate of five per cent per annum, payable semiannually, and shall be payable within fifteen (15) years from the date of issuance.

State tax for bonds.

SEC. 4. There shall be annually levied an ad valorem tax of one-half of one cent on each one hundred dollars of taxable property in the State of Nevada, including net proceeds of mines, and all moneys derived therefrom shall be paid into the cement mill building bond and interest redemption fund, which is hereby created and which shall be used for the purpose of paying interest and the annual redemption of the bonds authorized by this act.

Cement mill construction and equipment fund.

SEC. 5. The moneys derived from the sale of said bonds shall be placed in a special fund in the state treasury, to be known as cement mill construction and equipment fund, and shall be used solely for the purpose of constructing and equipping a cement mill for the State of Nevada, should the commission herein appointed decide so to do.

Commission to expend moneys.

SEC. 6. The said commission is hereby authorized and directed to use the moneys arising from the sale of said bonds, or such number thereof as they may deem necessary, for the construction, equipment, purchase of machinery and purchase of a site for a cement mill plant, should the said board decide that the construction and equipment of such a plant is feasible, desirable, and necessary, and any balance remaining in said fund after the completion, equipment, purchase of machinery and site shall be turned over and converted into a fund for running and maintaining said plant.

To determine character of plant.

SEC. 7. The said commission shall determine as to the character of said plant, the materials to be used therefor, and the plans thereof. All demands and bills contracted by said commission for such plant shall be paid in the manner now provided by law.

Commission to report.

SEC. 8. The said commission shall make a report of its findings and expenses to the thirtieth session of the state legislature.

COUNCIL OF DEFENSE

An Act creating the state council of defense, defining its powers and duties and other matters relating thereto, and making an appropriation therefor.

Approved March 28, 1919, 302

WHEREAS, In response to request of the national government the governor of Nevada during the war period appointed a committee of

patriotic citizens to direct and coordinate war work in the State of Nevada, such committee acting under the name and title of the "State Council of Defense of Nevada"; and

WHEREAS, The said state council of defense requested and secured the appointment by the various boards of county commissioners of county and community councils; and

WHEREAS, Said state, county, and community councils of Nevada, cooperating with the national government, proved invaluable agencies during the war period in carrying out governmental requests, and in the presentation to the people of the war needs and problems of the federal government and its department in meeting the emergencies of the war; and

WHEREAS, It is the manifest patriotic duty of Nevada to cooperate with the national government in meeting such conditions and demands as may arise during the readjustment period; and

WHEREAS, The national government, through the council of national defense, has specifically requested the continuance of the state council of defense and its subordinate and auxiliary councils for an indefinite period and asks that the same be legalized by act of the legislature; now, therefore:

Council of defense created.

SECTION 1. The state council of defense of Nevada is hereby created. Said state council of defense shall consist of not less than fifteen nor more than twenty-five members, to be appointed by the governor, who shall hold office subject to the pleasure of the governor. The present state council of defense of Nevada is hereby continued in existence subject to the power of the governor to remove any member thereof and to appoint any additional members. Said members of the state council of defense shall serve without pay. Their actual and necessary traveling expenses may be paid when upon the performance of duties assigned to them by the state council, its executive committee, or officer, from any funds available from contributions or otherwise. The state council of defense shall have the power to appoint an executive committee from its members and vest in such committee all the powers of the state council of defense. Said council shall also elect from its members a director, who shall be chief executive officer of the council.

Powers.

SEC. 2. The state council of defense shall have the power to adopt by-laws, rules and regulations for its government and for the convenient transaction of its business and to change, alter, and amend such by-laws from time to time. The state council of defense shall have the power to prescribe the powers and duties of all county and community councils. All county and community councils shall be organized under and by virtue of authority of the state council of defense and shall be under its control and supervision.

Cooperation with other governments.

SEC. 3. The state council of defense shall cooperate with all departments of the national, state, and county government in the promotion of such plans, programs, and policies as may be made necessary by the readjustment period following the war.

May issue permits for soliciting.

SEC. 4. The state council of defense, or its executive committee or director, shall have power to issue permits to all persons and organizations soliciting or asking contributions within the State of Nevada for war relief organizations. It shall be unlawful for any person or organization

to solicit or receive funds within the State of Nevada without first obtaining such permit from the state council of defense, the executive committee, or director.

Clerical assistance.

SEC. 5. The state council of defense, with the consent of the governor, may employ such clerical or stenographic assistance as may be necessary.

SEC. 6. [Carrying appropriation; omitted.]

BOARD OF DENTAL EXAMINERS

4433. Examinations.

SEC. 7. Said board shall examine all applicants for examination who shall furnish satisfactory evidence of having complied with the provisions of this act, relating to qualification for examination, and all persons satisfactorily passing such examinations shall be granted by said board a license to practice dentistry in the State of Nevada. The examination of applicants shall be elementary and practical in character, but sufficiently thorough to test the fitness of the candidate to practice dentistry. It shall include, written in the English language, questions on the following subjects: Anatomy, physiology, chemistry, materia medica, therapeutics, metallurgy, histology, pathology, operative and prosthetic dentistry, hygiene and dental jurisprudence. The answers to which shall be written or oral in the English language. Demonstrations of the applicant's skill in operative and prosthetic dentistry must also be given. All persons successfully passing such examinations shall be registered as licensed dentists on the board register, as provided in section 3, and shall also receive a certificate of such registration; said certificate to be signed by the president and secretary of said board. In no case shall any applicant be examined or given a certificate who is not twenty-one years of age. Any ethical person, who can furnish to the said board of examiners a certificate from the state board of dental examiners, or similar body, of some other state in the United States, showing that he or she has been a licensed practitioner of dentistry in that state for at least fifteen years shall be examined in the following subjects only: Operative and prosthetic dentistry. Demonstrations of such applicant's skill in operative and prosthetic dentistry must also be given. *As amended, Stats. 1913, 446.*

An Act supplemental to an act entitled "An act to insure the better education of practitioners of dental surgery, and to regulate the practice of dentistry in the State of Nevada, providing penalties for the violation hereof, and to repeal an act now in force relating to the same and known as 'An act to insure the better education of practitioners of dental surgery, and to regulate the practice of dentistry in the State of Nevada,' approved March 16, 1895," approved March 16, 1905.

Approved March 26, 1919, 178

Issuing license to dentists of another state without examination.

SECTION 1. The state board of dental examiners, created in the act to which this is supplemental, may, in its discretion, issue a license to practice dentistry or dental surgery without examination to a legal practitioner of dentistry or dental surgery, who removes to Nevada from another state or territory of the United States, or from a foreign country, in which he or she conducted a legal practice of dentistry or dental surgery for at least five years immediately preceding his or her removal; *provided*, such applicant present a certificate from the board of dental examiners or a like board of the state, territory or country from which he or she removes,

certifying that he or she is a competent dentist or dental surgeon, and of good moral character; *and provided further*, that such certificate is presented to the Nevada board of dental examiners not more than six months after its date of issue, and that the board of such other state, territory or country shall, in like manner, recognize certificates issued by the board of dental examiners of the State of Nevada, presented to such other board by a legal practitioner of dentistry or dental surgery from this state, who may wish to remove to or practice in such other state, territory or country.

Practitioner removing to another state—Certificate.

SEC. 2. Any one who is a legal and competent practitioner of dentistry or dental surgery in the State of Nevada, and of good moral character and known to the board of dental examiners of this state as such, who desires to change his or her residence to another state, territory, or foreign country, shall, upon application to the board of dental examiners, receive a certificate over the signature of the president and secretary of said board, and bearing its seal, which shall attest the facts above mentioned and giving the date upon which he or she was registered and licensed.

Fees for such license or certificate.

SEC. 3. The fees for issuing a license to a legal practitioner from another state, territory, or foreign country to practice dentistry or dental surgery in this state shall be twenty-five (\$25) dollars, and the fee for issuing a certificate to a legal practitioner of this state shall be five (\$5) dollars, and in each case the fee shall be paid in cash before the license or certificate respectively shall be issued.

Refusal or revocation of license—Notice and hearing—Dishonorable conduct defined.

SEC. 4. The board may refuse to issue the license provided for in this act, or may revoke any license now in force or that may hereafter be given, when it is made to appear by a written statement under oath, or by the declaration or statement bearing the official signatures or seal of some recognized dental board, society or organization, duly lodged with the president or secretary of the Nevada state board, that such individual has, by false or fraudulent representations, obtained or sought to obtain practice, or by false or fraudulent representations obtained or sought to obtain money, or other things of value, or has practiced under a name or names other than his own, or for any other dishonorable conduct. When such charges have been duly filed or lodged with the president or secretary of the board, the same shall be considered by the board, and if, from the sworn statement or from the official declaration or statements of some recognized dental board, society or organization, it is made to appear that such charge or charges may be well founded in fact, then the board shall serve written notice on the person charged, if he be the holder of a license issued in this state, or an applicant for a license in this state, and shall therewith serve a copy of the charge or charges, together with the name or names of the person or persons or the board, society or organization making such, and the same shall be served on the person at least twenty (20) days before the date fixed for the hearing or examination. The person charged shall be given a full and fair trial by the board with the right to be heard and appear in person and by counsel. Any unsuccessful applicant failing to obtain license or in cases of refusal or revocation shall have the right of appeal to the courts, requiring said board to show cause why such applicant should not be permitted to practice dentistry in the State of Nevada, or why such license was refused or revoked. The words "dishonorable conduct," as used in this act, are hereby declared to mean:

1. Conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy thereof, certified by the clerk of the court, or the judge in whose court the conviction is had, shall be conclusive evidence.

2. Employing directly or indirectly, any student or any suspended or unlicensed dentist to perform operations of any kind in treating or correction of the teeth or jaws except as heretofore provided in this act.

State dental society.

SEC. 5. The dental society of the State of Nevada, to be designated as "The Nevada State Dental Society," shall meet annually, or at such other time and at such place as may be determined on in the by-laws of the society, or by resolution at the preceding annual meeting. The society shall elect annually a president, vice-president, secretary and treasurer, who shall hold their offices for one year, and until others shall be chosen in their places, and may elect permanent members at any annual meeting from among any licensed dental practitioners within the state. The society may elect honorary members from any state not eligible to regular membership, who shall not be entitled to vote or hold any office in the society.

BOARD OF EMBALMERS

4447. Meetings—Record—May revoke licenses.

SEC. 3. (a) Said board shall meet at least once every year, and may also hold special meetings, if the proper discharge of its duties shall require, at a time and place to be fixed by the rules and by-laws of the board; and the rules and by-laws of the board shall provide for the giving of timely notice of all special meetings to all members of the board and to all applicants for licenses. Two of its members at any meeting may organize, and shall constitute a quorum for the transaction of business. The secretary shall be required to keep a record of all the meetings of said board, and a register of the names, residence address and business address of all embalmers duly licensed under the provisions of this act, and the number and date of license, which register shall at all reasonable times be open to public examination; and a copy of such register shall be furnished to all those so registered, and to the various railroad, transportation, and express companies doing business in the State of Nevada; and said board shall cause the prosecution of all persons violating any of the provisions of this act.

(b) The state board of embalmers shall have the power to revoke any license, issued in accordance with the provisions of this act, by a unanimous vote of said board, for gross incompetency, dishonesty, habitual intemperance, or any act derogatory to the morals or standing of the practice of embalming, as may be determined by the board; but before any license shall be revoked the holder thereof shall be entitled to at least thirty days' notice in writing of the charge against him or her and of the time and place of hearing and determining such charge, at which time and place he or she shall be entitled to be heard. Upon the revocation of any license it shall be the duty of the secretary of the board to strike the name of the licensee from the register of licensed embalmers, and to notify all railroad, transportation and express companies doing business in the State of Nevada, and all licensed embalmers in this state, of such action. *As amended, Stats. 1917, 66.*

4453. Certificates of other states—Fee.

SEC. 9. Any person holding a license as an embalmer from any other state, who shall show to the satisfaction of the board that he or she has passed an examination similar to that required by the provisions of this

act, and that he or she is competent to engage in the business or practice of embalming, may, upon the payment of the fee of ten dollars to the secretary of said board therefor, receive a license and be registered as an embalmer of this state without examination; but in case of any doubt upon the part of said board an examination shall be had as herein provided. *As amended, Stats. 1917, 66.*

As used in this section, the word "shall" is not equivalent to "may," but is mandatory. *Eddy v. State Board of Embalmers, 40 Nev. 329, 333, 334 (163 P. 245).*

4454. Penalties for noncompliance of common carriers.

SEC. 10. Any railroad, transportation or express company which shall receive for transportation and shipment any dead human body, unless said body has been prepared by a regularly licensed embalmer of the State of Nevada, with the removal permit, his or her name and the number of his or her embalmer's license attached thereon, unless said body shall reach its destination within the boundaries of this state and within thirty hours from time of death, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars. All laws in force in this state pertaining to the disposition, shipment, or burial of human dead bodies, or regulations of the state health department relating thereto, shall be and are in no wise affected by the provisions of this act. *As amended, Stats. 1917, 67.*

BOARD OF REGISTERED PROFESSIONAL ENGINEERS

An Act to provide for a state board of registered professional engineers.

Approved March 29, 1919, 364

Board created—Number of members.

SECTION 1. By June 1, 1919, the governor shall appoint five (5) persons, all of whom shall be engaged in the practice or teaching of professional engineering in any of its branches except military, and who shall constitute a board of registered professional engineers.

The members of such board shall, within thirty (30) days after their appointment, take and subscribe to the oath of office as prescribed by the laws of Nevada, and file the same with the secretary of state. They shall hold office for four (4) years, and until their successors are appointed and qualified; save and except that the members of the board first to be appointed under this act shall hold office one for one (1) year, one for two (2) years, one for three (3) years and two for four (4) years.

Any vacancies that may occur from any cause shall be filled by the governor for the unexpired term; *provided*, that all appointments made after the first year must be made from the roll of certificates issued and on file in the office of the secretary of state. The members of the board shall, as far as practical, consist of one (1) member of the following engineering professions: Mining, hydraulic, electric, civil or highway and mechanical.

Professional engineering defined.

SEC. 2. A person practices professional engineering within the meaning of this act who practices any branch of the profession other than military engineering. The practice of professional engineering involves the control of forces of nature and the utilization of materials and these forces for the benefit of man.

Office in Reno—Powers and duties.

SEC. 3. The state board of registered professional engineers shall have

its principal office in the city of Reno, and its powers and duties shall be as follows:

1. To formulate rules for the government of the board and for the examination of and granting of certificates of qualification to persons applying therefor.

2. To hold written examinations of applicants for such certificates, at least every six months, at such places as circumstances and applications may warrant.

3. To grant certificates of qualification to such applicants as may, upon examination, be found qualified in the theory and practice of the special line of engineering that application is made for, to practice as registered professional engineers.

4. To charge and collect from all applicants such fee, not exceeding \$15, as may be necessary to meet the expense of examination, issuance of certificates and conducting its office; *provided*, that all such expenses, including traveling and hotel expenses of its members while attending the sessions of the board or conducting examinations, must be paid from the current receipts, and no portion thereof shall be paid from the state treasury.

5. To require the annual renewal of all certificates, and to collect therefor a renewal fee of not exceeding \$2.50.

6. To revoke for cause any such certificate, after written notice to the holder, and a hearing being held thereon.

7. To report annually to the secretary of state, on or before December 1, all such certificates issued or renewed, together with a detailed statement of receipts and disbursements; *provided*, that any balance remaining in excess of the expenses incurred, may be retained by the board and used in defraying the future expense thereof.

8. All persons who have been actively engaged in the profession of engineering for six years, or who have a diploma from some recognized college or university and have had four (4) years active practice in engineering and who have in either case been two (2) years in charge of important engineering work as principal or assistant, shall not require an examination, if application is made in writing within six months after the passage of this act.

Officers—Quorum.

SEC. 4. The board shall appoint one of its members as chairman, who shall serve without pay, and one of its members as secretary and treasurer, who shall be paid a salary out of the funds of the board not to exceed \$200 per year. The chairman and secretary shall each serve two years, but the secretary first appointed shall serve only one year. At any meeting three (3) members shall constitute a quorum.

Examination of applicants.

SEC. 5. Any citizen of the United States or any person who has duly declared his intention of becoming such citizen, being over the age of 21 years, and of good moral character, may apply to the state board of registered professional engineers for examination under its rules. The examinations shall be in English and its scope as prescribed by the board. Upon the passing of a satisfactory examination, a certificate shall be issued, signed by the chairman and secretary, and during the period of its existence, or any renewal thereof, he shall be styled and known as a registered professional engineer, and no other person shall be permitted to assume and use such title or to use any words, letters, or figures to indicate that the person using the same is a certified engineer.

Penalty for violation.

SEC. 6. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and shall upon conviction be fined not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars, for the first offense and not less than fifty (\$50) dollars, nor more than five hundred (\$500) dollars for each subsequent offense.

EXAMINERS

4459. Cited, State ex rel. Norcross v. Eggers, 35 Nev. 257 (128 P. 986).

Cited, State ex rel. Abel v. Eggers, 36 Nev. 382 (136 P. 100).

After citing Const. art. 5, secs. 21, 22, this section, Rev. Laws, 4157, 4158, 4159, and Stats. 1913, 137, it was held that the "state treasury" did not include the state insurance fund, which was a special fund given to the treasurer in trust, as distinguished from the general taxes and revenues of the state, and that the requirement for the presentation of claims to the board of examiners and the issuance of warrants by the controller did not apply. State ex rel. Beebe v. McMillan, 36 Nev. 383, 385 (136 P. 108).

4481. Newspapers to do official advertising and publish decisions—Cost fixed—Regulations—Receipt—Certificate.

SECTION 1. The state board of examiners of the State of Nevada shall, within ten days after the approval of this act, select two daily newspapers, published at the capital, in one of which all advertising required by the state shall be published; *provided*, that the expense of such publication shall not exceed the sum of one hundred and twenty-five dollars (\$125) per month, and the other newspaper selected by the board shall publish all of the decisions of the supreme court, within ten days after such decision shall have been furnished the publisher by the clerk of the court, each decision to be published in its entirety in a single issue of the paper, and within two days thereafter the publisher shall furnish the clerk of the court with four hundred copies of the paper for distribution to the legal fraternity of the state; *provided*, that the cost of such publication and the furnishing of the extra copies of the paper shall not exceed the sum of one hundred and fifty dollars (\$150) per month, said sums to be paid monthly out of the general fund. At the time of delivering the copy of any decision to any publisher pursuant to the provisions of this act, which shall be immediately after said decision is filed, the clerk of the supreme court shall take a receipt for the same, which receipt shall set forth the date of such delivery, the title and number of the case, and the name of the publication in which said decision is to be printed. All opinions thus delivered shall be published within ten days from the date of the delivery thereof, as evidenced by the receipt herein provided for. The state controller, before delivering any warrant for the payment of any money in compensation for the publication of decisions of the supreme court, shall require a certificate to be filed in the office of said controller by the clerk of the supreme court, setting forth under oath that the decisions of the supreme court, designating each of the same by the number of the case, have been published as required by this act, and that each of said decisions has been published within the time as herein specified; *provided, however*, that for good cause shown, upon the affidavit of the publisher to whom the publication of supreme court decisions has been by the board of examiners awarded, the chief justice of the supreme court may extend the time within which such decision or any decision or decisions may be published; and where such extension of time is granted, notice of such order shall appear in the certificate of the clerk of the supreme court herein provided to be filed with the state controller; *provided, further*, that if during any month no decisions or opinions are filed by the supreme court the certificate from the clerk of the court shall state such fact, and such

certificate shall be sufficient to authorize the state controller to issue the warrant for that month. *As amended, Stats. 1917, 121.*

An Act regulating the manner of procedure for obtaining refund of moneys paid into the treasury of the State of Nevada by administrators or executors of escheated estates under mistake, and making an appropriation therefor.

Approved March 28, 1919, 291

Refund, how obtained.

SECTION 1. Whenever it shall appear to the state board of examiners of the State of Nevada, by competent evidence, that through mistake or inadvertence any administrator or executor of an escheated estate has paid into the state treasury more money than he should have paid, said board of examiners, by its unanimous resolution, may direct the state controller to draw his warrant for refund of such excess payment in favor of such administrator or executor.

Legal action, when.

SEC. 2. If any persons shall feel aggrieved by action taken by said board of examiners on any such claim an action may be prosecuted thereon, for and on behalf of said persons, against the State of Nevada under and pursuant to the provisions of sections 3653-3655, Revised Laws of Nevada.

SEC. 3. [Carrying appropriation; omitted.]

BOARD OF FINANCE

An Act to create a state board of finance, defining its powers and duties, and other matters connected therewith, and repealing all acts and parts of acts in conflict herewith.

Approved March 25, 1919, 164

Board created—Supersedes certain state boards—Powers.

SECTION 1. The state board of finance is hereby created. The state board of finance shall supersede—

1. The state banking board as defined in an act entitled "An act to regulate banking and other matters relating thereto," approved March 22, 1911, and all amendments thereto;

2. The state board of investments, as defined in an act entitled "An act to create a state board of investments of the state permanent school fund, defining its powers and duties, and other matters properly connected therewith, and repealing all acts and parts of acts in conflict herewith," approved March 24, 1917;

3. The state board of revenue, as defined in an act entitled "An act regulating the fiscal management of counties, cities, towns, school districts, and other governmental agencies," approved March 22, 1917.

The state board of finance shall have all the powers and perform all the duties heretofore belonging to the state banking board and the state board of investments, and the state board of revenue, under and by virtue of the three acts above-mentioned, which acts shall remain in full force and effect.

Composition.

SEC. 2. The state board of finance shall consist of the governor, state controller, state treasurer, and two other members to be appointed by the governor for a term of four years each. The two members so appointed by the governor shall receive ten dollars (\$10) per day for their services while actually engaged in the performance of their duties as members of said board, and shall be entitled also to traveling and necessary expenses incurred in the performance of such duties.

Secretary.

SEC. 3. The state bank examiner shall be the secretary of the state board of finance. He shall receive no additional salary or compensation for such services. He shall be the custodian of the records, papers and seal of said board and shall perform such additional duties as may be required of him.

Attorney-general legal advisor.

SEC. 4. The attorney-general shall be the legal advisor of the state board of finance.

Powers and duties.

SEC. 5. In addition to the powers conferred upon the state board of finance by the acts specified in section 1 of this act, the state board of finance shall have the following additional powers:

The state board of finance by unanimous vote of its members, and with the approval of the state board of examiners, is hereby empowered to lend any available moneys in the state treasury, other than those in the state permanent school fund, and those of the Nevada industrial insurance fund, to counties, cities, towns, school districts, high-school districts and other governmental agencies situate within the boundaries of the State of Nevada. Such loans shall be made only to counties, cities, towns, school districts, high-school districts, and other governmental agencies that have observed the regulations and followed the procedure for obtaining temporary loans set forth in an act entitled "An act regulating the fiscal management of counties, cities, towns, school districts, and other governmental agencies," approved March 22, 1917. Such loans shall be made for a period not longer than eighteen (18) months and shall bear interest at the rate of six per cent (6%) per annum.

In making loans to counties, cities, towns, school districts, high-school districts and other governmental agencies, the state board of finance shall follow the procedure for making other loans set forth in an act entitled "An act to create a state board of investments of the state permanent school fund, defining its powers and duties, and other matters properly connected therewith, and repealing all acts and parts of acts in conflict herewith," approved March 24, 1917.

Certain act not affected.

SEC. 6. Nothing in this act shall be construed to repeal or amend an act entitled "An act to authorize the deposit of state moneys in banks in this state, and to repeal all acts and parts of acts in conflict with this act," approved March 15, 1913.

FISH AND GAME COMMISSION

4482-3. Repealed, Stats. 1917, 474, and following act (Stats. 1917, 472) substituted:

An Act to provide a board of fish and game commissioners, defining their duties and powers; providing for a state fish and game warden and deputies; providing for the use and distribution of fish and game licenses, and other matters relating thereto, and repealing all acts in conflict herewith.

Approved March 27, 1917, 472

Governor to appoint.

SECTION 1. The governor of this state is hereby authorized and empowered to appoint three suitable persons to be styled "Fish and Game Commissioners," whose duty shall be to establish fish hatcheries, in localities

suitable to their hatching, upon such of the waters of this state as, in their judgment, shall be most available for the purpose of stocking and supplying the streams and lakes of this state with both foreign and native fish; and for such purpose may take the ova or spawn from fish now inhabiting the waters of the state; and may purchase and import from other states and countries spawn or ova of valuable fish, suitable for food, and may introduce the same, when obtained, into such rivers, streams and lakes as they may deem suited to the habits and successful culture of such fish. They may also employ persons who are skilful and expert in the science of fish-breeding, and may superintend and direct the construction of fish-ways and fish-ladders that may be built in the streams and waters of this state. The commissioners may, in their discretion, distribute the ova or spawn to be procured by them to such person or persons as have proper lakes, ponds, or streams for the propagation and breeding of fish, and who will, without expense to the state, take charge of such breeding and propagation.

Term of office—Biennial report.

SEC. 2. Such commissioners shall hold their respective offices for the term of four years, unless some other person shall be appointed to fill the vacancy occasioned by death, resignation or inability to attend to the duties required. The commissioners authorized to be appointed by this act shall receive no compensation for their services. The necessary expenses incidental to procuring and distributing the ova or spawn or fish, in the employment of fish breeders, and in carrying out the provisions of this act, shall be paid from any moneys that may be appropriated by the legislature, upon accounts or vouchers to be approved by the state board of examiners. The commissioners shall report biennially to the governor an account of their transactions under this act, and make an exhibit of their expenditure of money under its provisions.

State fish and game warden—Deputies—Salaries and expenses.

SEC. 3. The governor shall appoint a state fish and game warden, whose duties shall be to carry out and enforce all the fish and game laws and the prosecution of any violation of this act. The state fish and game warden may appoint a deputy or deputies of the different counties with the consent or recommendation of the county commissioners. The state fish and game warden can, at any time, ask for the resignation of the deputy or deputies so appointed if, in his judgment, the duties of the office in that particular county are not being properly attended to, and may, with recommendation of the county commissioners, appoint another deputy to fill the office of the one just removed. The salary of the said deputy fish and game warden shall be not more than one hundred dollars nor less than twenty dollars per month. Said warden shall be allowed a sum not to exceed twenty-five dollars per month for expenses incurred by him in the performance of his duties. The said county fish and game warden shall report quarterly to the state fish and game warden, giving a detailed statement of all arrests made, convictions had, fines collected, and generally in regard to the management of his office. Such reports shall be kept by the state fish and game warden, who biennially shall report the same to the state fish and game commission and the governor for statistical purposes.

Office at capitol.

SEC. 4. The board of capitol commissioners shall provide a suitable office in the capitol building for the state fish and game warden, where he shall keep all papers and records of all transactions, and books pertaining to his office as state fish and game warden.

Duties of state warden.

SEC. 5. It shall be the duty of the state fish and game warden to see that the county or deputy fish and game wardens shall enforce and cause the prosecution of violation of the fish and game act, that they shall prevent any violations of the license act, and that they shall carry out their several duties to the best interest for the protection of the fish and game in their respective counties. It shall also be his duty to assist the county or deputy fish and game warden in the stocking of the various streams, lakes and rivers of the state with fish and that they be handled in such a way as to conserve the greatest number of them.

Salary and expenses.

SEC. 6. The state fish and game warden shall receive a salary of eighteen hundred dollars per year for his services, payable in regular monthly payments. He shall also receive traveling expenses and other necessary expenses while traveling about the state, but in no case shall such expenses so allowed exceed the amount of twelve hundred dollars in any one year.

Term of office.

SEC. 7. The state fish and game warden shall hold office for a period of four years; *provided, however*, that the governor can remove him at any time for good and substantial reasons.

Salary and expenses paid, how.

SEC. 8. All money or moneys paid as salary and expenses for the conducting of the office of state fish and game warden shall be paid from any and all moneys that are obtained from the sale of fish and game licenses throughout the several counties, and shall be made payable to the state fish and game warden upon accounts or vouchers to be approved by the state board of examiners. Any money or moneys remaining in the state fish and game fund after the paying of all salaries and all expenses incident to the maintaining of the office of state fish and game warden may be used for the buying of additional fish or game, with the approval of the United States biological survey, the same to be distributed to the deputy game and fish wardens in the various counties.

State warden may accept passes.

SEC. 9. The state fish and game warden may accept transportation on any of the railroads operating in this state.

Certain act repealed.

SEC. 10. That certain act entitled "An act to provide for the appointment of a board of fish commissioners and to define their duties," approved March 16, 1905, is hereby repealed; *provided, however*, that all just debts now incurred by the board of "Fish Commissioners" created under said act shall be audited, allowed and approved as are other claims against the state and paid out of any fund which may be provided by the legislature to carry out the provisions of this act.

DEPARTMENT OF HIGHWAYS

An Act to provide a general highway law for the State of Nevada.

Approved March 23, 1917, 309

Department of highways created.

SECTION 1. There is hereby created a department of highways, which shall consist of three directors and the state highway engineer. The directors shall be appointed by the governor and shall hold office for three

years from the date of their appointment; *provided*, that the directors first appointed shall be designated, one for a term of one year, one for a term of two years, and one for a term of three years. Not more than two of such directors shall belong to the same political party. Said directors, or any of them, may be removed by the governor with or without cause. The state highway engineer hereinafter provided for shall attend all meetings of the department of highways, and shall give it such advice and counsel as may be required, but shall have no vote. The attorney-general shall be the legal adviser of the department of highways. The department of highways may adopt such rules or by-laws, not inconsistent with this act, as may be necessary to govern its acts and proceedings. It shall adopt a seal for use in authenticating its contracts, records and proceedings.

Salary of directors.

SEC. 2. The directors of the department of highways shall each receive a salary of ten (\$10) dollars per day for each day necessarily employed in the business of the department, not to exceed one thousand (\$1,000) dollars per annum, and shall be entitled to their actual and necessary traveling expenses when engaged in the duties of their office.

State highway engineer appointed—Duties.

SEC. 3. Immediately upon their appointment the directors of the department of highways shall meet at Carson City, Nevada, and elect a chairman of the board. Said directors, as soon as practicable, shall appoint a state highway engineer, who shall be a competent engineer, experienced and skilled in highway and bridge design, construction and maintenance. Said state highway engineer shall receive a salary of four thousand (\$4,000) dollars per annum, payable in equal monthly installments out of the state highway fund hereinafter created. He shall be allowed his actual necessary traveling expenses when absent from the state capital upon business of the state. He shall devote his whole time to the duties of his office, and may be removed by the board of highway directors at any time with or without cause upon sixty days notice. The state highway engineer, upon entering the duties of his office, shall file with the secretary of state his official oath, and shall likewise give and file with the secretary of state a bond to the State of Nevada in the sum of twenty-five thousand (\$25,000) dollars conditioned for the faithful performance of his duties. Said bond shall be approved by the governor. The expense of procuring such bond, if a corporate surety or sureties be given, shall be paid out of the state highway fund.

Engineer may employ assistants.

SEC. 4. The state highway engineer may employ such assistant engineers, clerks and other assistance as may be necessary to the proper conduct of the department of highways, and fix their compensation. Such compensation, however, shall first be approved by the highway directors. The department of highways shall maintain its office at Carson City, Nevada, in charge of the state highway engineer, and such offices shall be kept open at such times as the business of the department and the convenience or the interest of the public may require. Said offices shall be provided by the board of capitol commissioners.

Meetings of directors.

SEC. 5. It shall be the duty of the board of highway directors to hold meetings at such times and for such periods as they may deem essential to the proper carrying out of the provisions of this act. Such meetings may be held at any place in the state. It shall be the duty of said board to

consider at their meetings all questions relating to the general policy of the department of highways and the conduct of the work in general; receive and consider at such time as they may select the annual report of the state highway engineer; and to act for the said department in all matters relating to recommendations, reports and such other matters as it may be found advisable to submit to the governor or the legislature.

Engineer to keep records—Additional duties.

SEC. 6. The state highway engineer shall have charge of all the records of the department of highways; shall keep a record of all proceedings and orders pertaining to the business of his office and of the department; and shall keep on file copies of all plans, specifications and estimates prepared by his office. He shall cause to be made and kept by the department of highways a general plan of the state, and shall collect information and compile statistics relative to the mileage, character, and condition of the highways and bridges in the different counties of the state. He shall investigate and determine the methods of road construction best adapted to the various sections of the state, and shall establish standards for the construction and maintenance of highways in the various counties, giving due regard to the topography, natural conditions, character, and availability of road-building material. He may at all reasonable times be consulted by county officers having authority over highways and bridges relative to any question involving such highways and bridges, and he may, in like manner, call on such county officials for any information or assistance they may render in the performance of his duties with reference to the highways and bridges within their county, and it shall be the duty of such county officials to supply such information when called upon for same by the said state highway engineer. He shall determine the character and have the general supervision of the construction and repair of all roads and bridges improved under the provisions of this act. He shall report all the proceedings of his office to the board of highway directors annually, and at such other times as they may designate.

Acceptance of federal act.

SEC. 7. The State of Nevada hereby accepts and assents to the provisions of the act of Congress of the United States entitled "An act to provide that the United States shall aid the states in the construction of rural post-roads, and for other purposes," approved July 11, 1916. The state highway department is hereby authorized to enter into all contracts and agreements with the United States government relating to the survey, preparation of plans, construction and maintenance of roads under the provisions of the said act of Congress, to submit such scheme or program of construction and maintenance as may be required by the secretary of agriculture of the United States, and do all other things necessary fully to carry out the cooperation contemplated and provided for by the said act. For the construction or improvement of rural post-roads under the said act the good faith of the state is hereby pledged to make available funds sufficient to at least equal the sums apportioned to the state by or under the United States government during each and all of the five years for which federal funds are appropriated by section 3 of the said act, and to maintain at its own expense the road so constructed with the aid of funds so appropriated, and to make adequate provisions for carrying out such maintenance.

State highways designated.

SEC. 8. The highways which are constructed or improved by the department of highways in accordance with the routes set forth and described in this section shall be state highways and shall be constructed or improved

and maintained by the department of highways; *provided*, that the funds available to the state through the act of Congress or other federal acts may be used therefor; *and provided further*, that when such federal funds are made available, under section eight of said act of Congress, or other federal act or acts authorizing the use of federal funds to build roads in the national forest, the board is authorized and empowered to set aside for the purpose and to expend said highway funds on state highways built by the federal government. Such state highway routes are hereby designated and are set forth and described as follows:

Route 1. Beginning at a point east of Tecoma at the Utah state line, running thence in a westerly direction through the towns of Montello, Cobre, Wells, Deeth, Halleck, Elko, Carlin, Beowawe, Battle Mountain, Golconda, Winnemucca, Imlay, Lovelock, Fernley, and Wadsworth to the city of Reno, thence westerly through the town of Verdi and to the California-Nevada state line.

Route 2. Commencing at a point on the dividing line between White Pine County and the State of Utah, thence in a southwesterly direction to the city of Ely; thence westerly passing through the towns of Eureka, Austin, Fallon, and Hazen to a junction with route 1 as herein described at a point between the town of Hazen and the town of Fernley.

Route 3. Commencing at the city of Reno; thence running southerly through the city of Carson City; thence westerly to Glenbrook on Lake Tahoe; thence in a southerly direction to the Nevada-California state line at or near Lakeside; beginning again at Carson City thence to the town of Yerington by the most available and practicable route; thence to the northerly end of Walker Lake by the most available and practicable route; thence along the west side of Walker Lake to the town of Hawthorne; thence to and through the towns of Luning, Mina, and Millers to the town of Tonopah; thence southerly to the town of Goldfield; thence westerly by the most practicable and available route to the Nevada-California state line.

Route 4. Commencing at the city of Ely and running in a general southwesterly direction to the town of Tonopah.

Route 5. Commencing at Goldfield and running southeasterly to Beatty, thence along or over the grade of the Las Vegas and Tonopah Railway to Las Vegas, thence to Searchlight and to a junction with the Arizona or California state highway system.

Route 6. Commencing at the Arizona line near Mesquite and running southwesterly over what is now known as the Arrow Head trail through Las Vegas to Jean, Nevada.

As soon as funds are available the department of highways shall commence the construction of said routes. *As amended, Stats. 1919, 23.*

Appropriation—Tax levy.

SEC. 9. In order to provide funds for carrying out the provisions of this act there is hereby created the state highway fund, and there is hereby appropriated the sum of forty thousand (\$40,000) dollars, from the general fund of the state treasury not otherwise appropriated, for said state highway fund for the purposes of this act. In order to provide for the continuation of said state highway fund there shall be levied for the year 1917, an ad valorem tax of seven cents, and for the year 1918 and annually thereafter ten cents on each one hundred dollars of taxable property in this state, including the proceeds of mines, which shall be collected as other taxes, and paid into the state treasury for said state highway fund for the exclusive use and purpose of this act. Any portion of said state highway fund unexpended at the expiration of any fiscal year shall be available for apportionment and expenditure during succeeding years, and until this act

is modified or repealed. Said state highway fund and the moneys collected therefor shall be available and shall be used for the purpose of constructing, equipping and maintaining the highways designated by the preceding section.

Duties of county commissioners—How fund expended.

SEC. 10. The board of county commissioners of each and every county through which the state highway and state highway routes, as defined and designated by section 8 of this act, and all other officers having to do with the assessment of property and collection of taxes are hereby directed to levy and collect for the fiscal year 1917 a tax of seven cents, and for the fiscal year 1918, and annually thereafter, a tax of ten cents on each one hundred dollars of taxable property within their respective counties for the purpose of creating a highway fund. The proceeds of said tax shall be set aside in a separate fund in the county treasury and shall be used only for the purpose of assisting the state in constructing so much of the state highway or highways as may run through their county. The said fund shall be hereinafter called in this act "The County-State Highway Fund," and shall be expended only under the direction of said state highway engineer, and the moneys shall be paid out upon bills for construction upon the state highways within the county, certified by the state highway engineer, presented to and approved by the board of county commissioners as other bills against the county are paid.

If upon the approval of this act the time in which boards of county commissioners shall fix and levy taxes for county purposes shall have passed, the levy of seven cents on each one hundred dollars of taxable property within the county, as heretofore provided for herein, shall be deemed to be levied by this act without any act on the part of the commissioners of the respective counties. On and after the year 1917 it shall be the mandatory duty of the board of county commissioners to levy the annual tax herein provided for for the purpose of creating and maintaining "The County-State Highway Fund."

Department to submit plans.

SEC. 11. Within ninety days after this act shall take effect and on the 10th day of January of each year thereafter the department of highways shall send to the board of county commissioners of each county, through which the state highways as defined and established in this act run, a plan in such detail as they may deem advisable of the amount, character and nature of the work of construction to be done within the respective counties during the ensuing year, and immediately upon the receipt of such plan by the board of county commissioners of the respective counties the board of county commissioners shall enter an order making available for state highway purposes all moneys in "The County-State Highway Fund" which shall be subject to be expended under the direction of the state highway engineer upon the said highways within the county; *provided, however*, that no money shall be expended from the state highway fund or from "The County-State Highway Fund," within the limits of any city or town.

Construction and improvement, how supervised.

SEC. 12. All work of construction and improvement of state highways as defined and established under the provisions of this act, and all highways permitted under and by virtue of the provisions of section 31, shall be under the supervision and direction of the state highway engineer, and shall be performed in accordance with the plans, specifications, and contracts prepared and executed by him therefor.

Revolving fund established.

SEC. 13. All bills against the state highway fund for construction, improvement, or maintenance under the provisions of this act shall be certified by the state highway engineer and shall be presented and examined by the board of examiners, and when so allowed, upon being audited by the state controller, the state controller shall draw his warrant therefor upon the state treasurer; *provided, however*, that upon the written request of the board of directors of the department of highways, the state controller of the State of Nevada is hereby authorized, empowered and directed to draw his warrant in favor of the state highway engineer in the sum of ten thousand (\$10,000) dollars, and upon presentation of the same to the treasurer of the State of Nevada the said treasurer is hereby authorized, empowered and directed to pay the same. The said sum of ten thousand (\$10,000) dollars is to be known as the "State Highway Revolving Fund" and may be used by the said state highway engineer for the purpose of paying the current pay-rolls of the department of highways and other obligations requiring prompt payment, and for no other purpose; and all bills or demands paid by him from said fund shall after payment thereof be passed upon by the board of examiners in the same manner as other claims against the State of Nevada, and when approved by the board of examiners, the controller shall draw his warrant for the amount of such claim or claims in favor of the "State Highway Revolving Fund" to be paid to the order of the state highway engineer, and the treasurer shall pay the same. The state highway engineer is directed to deposit said state highway revolving fund in one or more banks of reputable standing, and to secure the said deposit or deposits by depository bonds satisfactory to the board of examiners. *As amended, Stats. 1919, 254.*

Expenditures, how incurred—Publication.

SEC. 14. For the improvements that cost two thousand (\$2,000) dollars or less it shall be discretionary with the state highway engineer, with the approval of the board of highway directors, to execute such work or improvements himself or to let the same by contract; but where the cost of the proposed improvements is to exceed the sum of two thousand (\$2,000) dollars it shall be the duty of the state highway engineer to advertise for bids for such work according to plans and specifications prepared by him. Publication thereof shall be made in a newspaper of general circulation in the county in which the proposed improvement or construction is to be made for a period of two weeks in a weekly newspaper, or for a period of ten days, when in a daily newspaper, and such advertisement shall also be published in one or more daily papers of general circulation throughout the state for a period of ten days. Such advertisement shall state the place where the bidder may inspect the plans and specifications, the time and place when bids will be received, and the time and place for opening the same. Every bid shall be accompanied by a certified check of the bidder in an amount equal to five per cent of the amount of his bid, said amount to be forfeited to the state highway fund should the bearer to whom the contract is awarded fail to enter into the contract in accordance with his bid and give the bond required within ten days after notice of such award. The checks of all unsuccessful bidders shall be returned immediately after the contract is awarded and the bond given.

All bids so submitted shall be received at the office of the department of highways and shall be publicly opened and read at the time stated in the advertisement. The department of highways shall have the right to reject any and all bids if, in the opinion of the department, the bids are unbalanced, or for any good cause. In awarding contract the department of

highways shall make the award to the lowest responsible bidder. The successful bidder shall be required to furnish bond, with sureties, approved by the department of highways in a sum equal to at least one-half of the amount of the contract awarded conditioned that such work shall be performed in accordance with the plans and specifications and terms of the contract, and otherwise conditioned as in this act provided, and no party bidding for the work shall be accepted as surety on any required bond. When the contract is executed, a copy of the same, including plans and specifications and estimates of cost, shall be filed forthwith in the office of the department of highways and a like copy filed with the clerk of the board of county commissioners.

Engineer may authorize partial payment.

SEC. 15. The state highway engineer may authorize partial payment to any contractor performing any highway improvement or construction as the work progresses. The progress estimates shall be based upon materials in place and labor expended thereon; but not more than eighty-five per cent of the contract price of work shall be paid in advance of full completion and acceptance of such improvement or construction. Fifteen per cent of the contract price of any such work or improvement or construction shall be withheld until the same is satisfactorily completed and accepted by the state highway engineer and such other officer of the United States government as shall have supervision of other highways within the meaning of this act.

Contracts executed in name of state.

SEC. 16. All contracts authorized under the provisions of this act shall be executed in the name of the State of Nevada and shall be signed by the chairman of the department of highways, attested by the state highway engineer under the seal of the department, signed by contracting party or parties, and the form and legality thereof approved by the attorney-general. No director of the department of highways and no state highway engineer, and no employee or officer of the department of highways shall be interested directly or indirectly in any contract of any kind or character for the construction, supervision or maintenance of any of the state highways of this state, and such contract shall be void. Any director of the department of highways or any state highway engineer or any officer or employee who shall become, directly or indirectly, interested in any contract for the construction, supervision, or maintenance of any of the state highways in this state shall be guilty of a misdemeanor.

Duties of contractor.

SEC. 17. Every contractor for improvements, construction or maintenance shall execute a bond as heretofore provided herein, and in addition to the conditions heretofore provided such bond shall provide and secure payment for all material, provisions, provender and supplies, teams, trucks and other means of transportation used in, or upon, or about, or for the performance of the work contracted to be done, and for any work or labor done thereon. Any person or corporation furnishing labor or supplies as heretofore provided herein desiring to be protected under said bond shall file his claim within thirty days from the completion of the contract with the department of highways, which claim shall be verified and contain a statement that same has not been paid. And any such person or corporation so filing a claim may at any time within six months thereafter commence an action against the surety or sureties on the bond for the recovery of the amount of the claim. Failure to commence the action upon such claim against the bond and the sureties thereon within six months shall bar any right of action against such surety or sureties.

Every successful contractor to whom a contract is awarded shall be liable under the provisions of the Nevada industrial commission act, Stats. 1913, page 137, et seq., and shall pay the premiums and percentages as required in said act, and such act shall be mandatory and compulsory upon every such contractor, and the state controller, before paying any money or drawing his warrant, may require satisfactory evidence of the payment of the premiums required under said act.

No contractor shall let any subcontract except upon the written permission and approval of the department of highways, and all subcontractors shall be required in like manner to comply with the terms of the Nevada industrial commission act in like manner as contractors.

Improvement state highway expense.

SEC. 18. Whenever a road, being a part of the system of state highways herein created, shall be constructed or improved under the provisions of this act, the state highway engineer shall thereafter keep all such roads in repair, and the total cost of such maintenance shall be paid by the state treasurer out of the state highway fund herein created and provided for.

Highway not to be disturbed without approval.

SEC. 19. No state highway shall be dug up, crossed or otherwise used for laying or relaying pipe lines, ditches, flumes, sewers, poles, wires or railways, or for other purposes, without the written permit of the state highway engineer, and then only in accordance with the regulations prescribed by said engineer; and all such work shall be done under the supervision and to the satisfaction of said engineer, and all the cost of replacing the highway in as good condition as previous to its being disturbed shall be paid by the persons to whom or in whose behalf such permit was given or by the person by whom the work was done. In case of immediate necessity therefor a city or town may dig up such state highway without such permit from said engineer; *provided*, that in such cases such highways shall be forthwith replaced in as good condition as before at the expense of such city or town.

Purchase of road machinery authorized.

SEC. 20. The state highway engineer, with the approval of the board of highway directors, may purchase for the state all rock-crushers, steam-rollers, vehicles and road machinery, tools and implements that may be needed for the purpose of this act, and such machinery shall be managed and used by and under the direction of the state highway engineer, who shall employ competent men to operate and keep them in repair. Said engineer may purchase all necessary materials and supplies and incur such other expenses as may be necessary in the operation, maintenance and transportation of all such road machinery, tools and implements.

Method of acquiring right of way.

SEC. 21. In all cases of a highway constructed under the provisions of this act which is located or relocated over a new right of way, such right of way shall be acquired by the department of highways in the name of the state, either by donation by the owners of the land over which such highway shall pass, or by agreement between such owners and the department of highways or through the exercise by the department of highways in the name of and on behalf of the state of the power of eminent domain in the same manner as provided for acquiring property for other public uses, and the entire cost of such right of way shall be paid out of the state highway fund. Any damages that may be sustained by any person by the construction or alteration of any highway under the provisions of this act shall be investigated and determined by the state highway engineer, the

same to be approved by the board of highway directors, and shall be paid as other claims against the state are paid.

Any person who may consider himself aggrieved by such determination may commence an action in the district court of the county in which such property lies, within six months after the completion of said highway or the alteration thereon, in the same manner as actions for damages sustained for the taking of private land for public purposes.

Additional powers of department.

SEC. 22. The department of highways, in the name of the state, is hereby empowered to lease, purchase or otherwise acquire (including acquisition by donation) gravel, sand, or gravel or sand-pits, rock, rock-quarries, road metal and road material of any kind, also the right to take water from any stream, ditch, lake, well, or other source of water supply, for drinking purposes or for the use of contractors or for the use of the department of the state highway engineer in the construction of the state highway or in the maintenance thereof; and it is further empowered, where it is impossible to agree with the owner or owners thereof, to condemn any land upon which said materials may be situated or any water necessary for the supplying of the water aforesaid and to institute and carry on all necessary proceedings therefor. The amount agreed to be paid or the amount of the payment awarded for such material or water shall be paid upon the certificate of the state highway engineer as other claims against the state are paid. But nothing contained in this act shall be so construed as to divest any person or company of any vested right in or to any water right or the beneficial use thereof.

Engineer may employ assistants.

SEC. 23. The state highway engineer shall have authority to employ any and all labor necessary to carry out the provisions of this act, and shall pay such labor the reasonable and customary price per day for the class of work performed.

Engineer empowered to change route.

SEC. 24. Whenever in the construction, reconstruction, maintenance, or repair of any of the state highways it shall appear to the state highway engineer that any portion of the state highway as herein defined is dangerous or inconvenient to the traveling public in its present location, or as it may from time to time be located, by reason of grades, dangerous turns, or other local conditions; or that the expense in the construction, building, rebuilding, maintenance or repair thereof would be unreasonably great and could be materially reduced or lessened by change of route, the state highway engineer is hereby empowered to divert or change said route in such manner as in his discretion may seem best; *provided*, that the said state highway engineer shall first submit a plan of the proposed change to the board of highway directors and the same shall be approved by them.

As a part of every plan and of all specifications and contracts for the construction of the said highways herein provided for provision shall be made for the erection of permanent guide-posts and signboards at every point where another road crosses or diverges such state highway and at all places requiring warning to the traveling public as to the condition of the road, such as dangerous turns, steep grades, etc., which guide-posts and signboards shall contain plain and accurate information as to the distances of towns and other points; such as is usually contained on signboards for the information of the traveling public.

Advertising signs not lawful.

SEC. 25. No advertising signs, signboards, or boards or other materials

containing advertising matter shall be placed upon or over any state highway, nor within twenty feet of the main traveled portion thereof; nor upon any bridge or other structure thereon; *provided*, that counties, towns or cities of the State of Nevada may, by permission of the state highway department, place at such points as may be designated by the state highway engineer suitable signboards advertising such counties, towns or municipalities. If any such sign is placed in violation of this act it is thereby declared a public nuisance and may be forthwith removed by the department of highways or its employees. Any person placing any such sign in violation of the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than ten dollars or more than fifty dollars.

All construction to be permanent.

SEC. 26. All highways constructed under the provisions of this act shall be constructed in such manner as to provide for sufficient and permanent drainage and of such materials as to insure, so far as reasonably may be done, considering all of the circumstances, permanent wearing qualities and to provide against excessive maintenance cost. Regard shall always be had to the character and quality of the traffic to be accommodated and the interests of the public to be served.

Department may employ convicts.

SEC. 27. The department of highways may employ or cause to be employed the convicts confined in the state prison in the construction, improvement, and maintenance of the state highways provided for in this act, or in the quarrying, mining, preparation or transportation of materials for use thereon. Upon the requisition of the department of highways, the warden of the state prison shall send to the place and at the time designated the number of convicts requisitioned or such portion thereof as are, in the judgment of the warden, available.

The state highway engineer shall designate and supervise all road work done by such convicts; and the department of highways shall provide for and maintain the necessary camps and camp equipment for the accommodation of said convicts and the guards for such camp. But the warden of the state prison shall have full control at all times over the discipline of said convicts.

The expense of transportation, necessary guarding, and all extra expenses necessary or incidental to the work of such convicts shall be borne by the department of highways as herein provided. The department of highways and the warden shall enter into an agreement respecting the division of such expense on the basis hereinbefore stated, it being the intention that all extra expense connected with the use of said convicts upon the state highways, over and above the care and maintenance of said convicts at the state prison, shall be borne by the department of highways.

The proper authorities of said state prison and of the state are hereby empowered and directed, where convicts are so employed upon state highways, to grant additional good-time allowance to such convicts conditioned upon their loyal obedience and efficient cooperation with the state, and also, in their discretion, to pay such convicts 25 cents for each day's work faithfully performed.

State printer to provide necessary printing.

SEC. 28. The state printer of the State of Nevada is hereby authorized and directed to furnish such stationery and printing, including all reports, statistics, blanks or reports and accounts as may be necessary for the use of the department hereby created and its officers upon the requisition of the state highway engineer.

Duties relative to railroad crossings—Duties of railroads.

SEC. 29. Whenever the state highway, as it now exists or may hereafter be designated and created, crosses any railroad track, whether the same be a street railroad or an interurban railroad, or a steam railroad, such railroad company is hereby required to construct and maintain such highway, at its own expense, as hereinafter provided. Said railroad company shall construct and maintain asphaltum, gravel and asphaltum, or gravel and oil, or asphaltum base upon both sides of each track and for the full space between the tracks and for two feet on the outer sides of each line of tracks for the full height of the rails and of the width of not less than twenty feet. In case of a failure of such railroad company to comply with the provisions of this act the department of highways may, at its option, construct and maintain it in the condition herein provided, and shall have the right to recover the expenses thereof from such railroad company from time to time as circumstances require.

Federal aid money to be deposited.

SEC. 30. All moneys received from the government of the United States, under and by virtue of the provisions of an act of Congress entitled "An act to provide that the United States shall aid the states in the construction of rural post-roads and for other purposes," approved July 11, 1916, for the construction of any of the state highways in this state shall be paid into the state treasury and become a part of the state highway fund.

Certain counties to have money rebated.

SEC. 31. In any county through which no state highway or state highway route is located in accordance with the provisions of section 8 of this act or as hereafter defined by any act of the legislature, such county shall be entitled to receive the full amount which it has paid into the state treasury for the state highway fund less its proportional share for administrative and overhead expenses prorated on the basis of assessed valuation, and an additional amount which shall be equivalent to that proportion of the moneys received from the federal government under the terms of the act of Congress of the United States entitled "An act to provide that the United States shall aid in the construction of rural post-roads, and for other purposes," approved July 11, 1916, which the assessed valuation of such county bears to the assessed valuation of the state as a whole, which shall be used by such county in the building and maintaining of any highway within its borders; *provided, however*, that the general plan thereof shall be approved by the department of highways of this state and conform to the act of Congress of the United States entitled "An act to provide that the United States shall aid the states in the construction of rural post-roads and for other purposes," approved July 11, 1916.

County commissioners may authorize additional expense.

SEC. 32. Counties through which the state highway routes pass may, through the board of county commissioners, authorize the expenditure of moneys in excess of the amount of the county-state highway fund provided for by section 10 of this act upon the state highway within their respective counties.

Engineer to supervise county work, when.

SEC. 33. It shall be the duty of the state highway engineer, upon the request of the board of county commissioners of any county, to take charge and supervise the construction of any county highways and the expenditures of moneys thereon when deemed advisable by such board of county commissioners.

May accept donations.

SEC. 34. The department of highways is hereby authorized to accept donations of moneys, labor and material to be expended or used upon the state highways at such points or places as may be designated by the donor.

INDUSTRIAL INSURANCE COMMISSION

An Act relating to the compensation of injured workmen in the industries of this state and the compensation to their dependents where such injuries result in death, creating an industrial insurance commission, providing for the creation and disbursement of funds for the compensation and care of workmen injured in the course of employment, and defining and regulating the liability of employers to their employees; and repealing all acts and parts of acts in conflict with this act.

Approved March 15, 1913, 137

Who embraced in act.

SECTION 1. (a) When, as in this act provided, an employer shall accept the terms of this act and be governed by its provisions, every such employer shall be conclusively presumed to have elected to provide, secure, and pay compensation according to the terms, conditions, and provisions of this act for any and all personal injuries by accident sustained by an employee arising out of and in the course of the employment; and in such cases the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury, unless by the terms of this act otherwise provided.

(b) Where a state, county, municipal corporation, school district, cities under special charter and commission form of government, is the employer, the terms, conditions and provisions of this act, for the payment of premiums to the state insurance fund for the payment of compensation and amount thereof for such injury sustained by an employee of such employer, shall be conclusive, compulsory, and obligatory upon both employer and employee.

(c) If an employer having the right under the provisions of this act to accept the terms, conditions and provisions thereof, shall fail to accept the same as herein provided, every such employer shall be deemed to have rejected the terms, conditions, and provisions thereof, and in such case such employer shall not escape liability for personal injury by accident sustained by an employee of such employer when the injury sustained arises out of and in the usual course of the employment, because:

(1) The employee assumed the risks inherent or incidental to, or arising out of, his or her employment; or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising from the failure of the employer to furnish reasonably safe tools or appliances, or because the employer exercised reasonable care in selecting reasonably competent employees in the business;

(2) That the injury was caused by the negligence of a coemployee;

(3) That the employee was negligent, unless and except it shall appear that such negligence was wilful and with intent to cause the injury, or the result of intoxication on the part of the injured party;

(4) In actions by an employee against an employer for personal injuries sustained, arising out of and in the course of the employment where the employer has rejected the provisions of this act, it shall be presumed that the injury to the employee was the first result, and growing out of the negligence of the employer; and that such negligence was the proximate cause of the injury; and in such case the burden of proof shall rest upon the employer to rebut the presumption of negligence.

(d) Every such employer shall be conclusively presumed not to have

elected to provide, secure, and pay compensation to employees for injuries sustained arising out of and in the course of the employment according to the provisions of this act, unless and until notice in writing of an election to accept shall have been given to the Nevada industrial commission, substantially in the following form:

EMPLOYER'S NOTICE TO ACCEPT

To the Nevada Industrial Commission:

You are hereby notified that the undersigned accepts the provisions of the "Nevada Industrial Insurance Act."

Signed.....

(e) Where the employer has given notice of an election to accept the terms of this act, and the employee has not given notice of an election to reject the terms of this act, every contract to hire, express or implied, shall be construed as an implied agreement between them, and a part of the contract on the part of the employer to provide, secure and pay, and on the part of the employee to accept, compensation in the manner as by this act provided for all personal injuries sustained arising out of and in the course of employment.

(f) Every such employer electing to be governed by the provisions of this act, before becoming entitled to the benefits of the act in the providing, securing, and paying of compensation to the employees thereunder, shall, on or before the first day of July, 1917, and thereafter during the period of his election to be governed by the provisions of the act, pay to the Nevada industrial commission all premiums in the manner hereinafter provided; and during the period of his election to be governed by the provisions of the act shall comply with all conditions and provisions of the act, hereinafter stated.

(g) Failure on the part of any such employer to pay the premiums as by the provisions of this act required shall operate as a rejection of the terms of the act. In the event of any rejection of this act or the terms hereof, such rejecting employer shall post a notice of rejection of the terms of the act upon his premises in a conspicuous place. Failure to post said notice shall constitute a misdemeanor.

(h) It shall be the duty of such employer at all times to maintain the notice or notices so provided for the information of his employees, and any person failing so to maintain the same shall be guilty of a misdemeanor. *As amended, Stats. 1915, 279; 1917, 436.*

Compensation not paid, when.

SEC. 2. No compensation under this act shall be allowed for an injury caused:

(a) By the employee's wilful intention to injure himself or to wilfully injure another; nor shall compensation be paid to an injured employee if injury is sustained while intoxicated.

Charge against employee for liability unlawful.

SEC. 2½. It shall be unlawful for any employer who has elected to reject the terms, conditions and provisions of this act, to make any charge against any employee, or to deduct from the wages of any employee any sum of money to meet the costs, in whole or in part, of the liability incurred by the employer by reason of his rejection of the Nevada industrial insurance act. Any such employer who makes a deduction for such purpose from the salary or wage of any employee shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars for each offense. It is hereby made

the duty of the district attorney of the county where a violation of this provision is charged to prosecute such cases upon complaint of the commission, or upon complaint of any employee who submits proper evidence of a violation of this provision. *Added, Stats. 1917, 438.*

Rights of employee.

SEC. 3. (a) The rights and remedies provided in this act for an employee on account of an injury shall be exclusive of all other rights and remedies of such employee, his personal or legal representatives, dependents or next of kin, at common law or otherwise on account of such injury; all employees affected by this act shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions and provisions of this act until notice in writing shall have been served upon his employer; and also on the Nevada industrial commission, with return thereon by affidavit showing the date upon which notice was served upon the employer.

(b) In the event that such employee elects to reject the terms, conditions and provisions of this act, the rights and remedies thereof shall not apply where an employee brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this act; and in such actions where the employee has rejected the terms of this act the employer shall have the right to plead and rely upon any and all defenses including those at common law, and the rules and defenses of contributory negligence, assumption of risk and fellow servant shall apply and be available to the employer unless otherwise provided in this act; *provided, however,* that if an employee sustains an injury as the result of the employer's failure to furnish or fails to exercise reasonable care to keep or maintain any safety device required by statute or rule, or violate any of the statutory provisions or rules and regulations now or hereafter in force relating to safety of employees, the doctrine of assumed risk in such case growing out of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employee shall be substantially in the following form:

EMPLOYEE'S NOTICE TO REJECT TERMS OF THIS ACT

To.... (Name of employer).... and the Nevada Industrial Commission:

You and each of you are hereby notified that the undersigned elects to reject the terms, conditions and provisions of an act for the payment of compensation as provided by the Industrial Insurance Act of the State of Nevada and acts amendatory thereto, and elects to rely upon the common law as modified by section 3 of the said act for the right to recover for personal injury which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named.

Dated this..... day of....., 19....

Signed.....

State of Nevada, }
County of..... } ss.

The undersigned being first duly sworn deposes and says that the written notice was on the..... day of....., 19...., served on the within-named employer of the undersigned by delivering to (name of person served).... a true, correct and verbatim copy thereof.

Subscribed and sworn (or affirmed) to before me by the said.....
this..... day of....., 19....

....., Notary Public.

When employer accepts and employee rejects.

SEC. 4. (a) When the employer has accepted the terms of this act, or the employee has rejected the terms thereof in compliance with the provisions of this act, such election shall continue and be in force until such employer shall thereafter reject the provisions of this act, or said employee accept the provisions of this act, respectively, as provided in subsection (b) of this section.

(b) When an employer accepts, or an employee rejects, the provisions of this act, such party may at any time thereafter elect to waive such acceptance or rejection by giving notice in writing in the same manner required by the employer in accepting, or by the employee in rejecting, the provisions of this act, and which shall become effective when filed with the Nevada industrial commission. *As amended, Stats. 1915, 282; 1917, 438.*

Liability remains the same.

SEC. 5. Where the employer and employee elect to reject the terms, conditions and provisions of this act, the liability of the employer shall be the same as though the employee had not rejected the terms, conditions and provisions thereof.

Employer cannot evade payment of premiums.

SEC. 6. An employer having come under this act, who thereafter elects to reject the terms, conditions and provisions thereof, shall not be relieved from the payment of premiums to Nevada industrial commission prior to the time his notice of rejection becomes effective; and said premiums may be recovered in an action at law as hereinafter in this act provided.

Employee may recover from person other than employer.

SEC. 7. When an employee coming under the provisions of the act receives an injury for which compensation is payable under this act and which injury was caused under circumstances creating a legal liability in some person other than the employer, to pay damages in respect thereof:

(a) The employee or beneficiary may take proceedings against that person to recover damages, but the amount of the compensation to which he is entitled under this act shall be reduced by the amount of the damages recovered;

(b) If the employee or beneficiary in such case receives compensation under this act, the Nevada industrial commission, by whom the compensation was paid, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the employee to recover therefor. *As amended, Stats. 1919, 305.*

"Employer," "employee," and "leasers" defined.

SEC. 7½. (a) The term "employer," as used in this act, shall be construed to mean: The state, and each county, city and county, city, school district and all public corporations and quasi-public corporations therein, and every person, firm, voluntary association, and private corporation, including any public-service corporation, which has any person in service under any appointment or contract of hire, or apprenticeship, expressed or implied, oral or written, and the legal representative of any deceased employer.

(b) The term "employee," as used in this act, shall be construed to mean: Every person in the service of an employer as defined in subdivision (a) of this section under any appointment or contract of hire or apprenticeship, expressed or implied, oral or written, including aliens, and also including minors, whether lawfully or unlawfully employed, and all elected and appointed paid public officers, and all officers and members of boards

of directors of quasi-public or private corporations while rendering actual service for such corporation for pay, and a working member of a partnership receiving wages irrespective of profits from such partnership, but excluding any person whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer; *provided*, that the term "casual," as used herein, shall be taken to refer only to employments where the work contemplated is to be completed in not exceeding ten working days, without regard to the number of men employed and where the total labor cost of such work is less than one hundred dollars.

(c) Workmen associating themselves under a partnership agreement, the principal purpose of which is the performance of the labor on a particular piece of work, shall be deemed employees of the person having such work executed, and, in the event that the average monthly wages are not otherwise ascertainable, shall be deemed to be employed at the average monthly wages of workmen engaged in like work in the same locality.

(d) Workmen, commonly called "leasers," engaged individually or in association with other workmen in performing manual labor upon the mining property of another in the expectation of finding, developing, or extracting ore or mineral of value under an agreement, oral or written, to share in whole or in part the value of the ore or minerals found, developed or extracted with the lessor, shall be deemed employees of such lessor, and for the purposes of this act shall be deemed to be employed at the average wage paid to regularly employed miners in the locality. *Added, Stats. 1919, 305.*

Commission created—Vacancies—Term—Chairman—Majority decides—Removals—Compensation—Executive officer.

SEC. 8. (a) The administration of this act on and after April 1, 1915, is hereby imposed upon a commission to be known as the "Nevada Industrial Commission"; and said commission, to consist of three commissioners, is hereby created. The governor, attorney-general, and inspector of mines shall constitute an industrial commission board for the appointment of such commissioners. Vacancies shall be filled in the same manner for unexpired terms. No more than two of the commission shall be members of the same political party at the date of any appointment. Each commissioner shall hold office for the term of four years from and after date of his appointment, and until his successor shall be appointed and shall have qualified. One commissioner shall be designated by the governor to be, and upon being so designated shall be, chairman of the commission. A decision on any question arising under the act concurred in by two of the commissioners shall be the decision of the commission.

(b) The industrial commission board may remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense, upon not less than ten days' notice. If such commissioner shall be removed, the industrial commission board shall file in the office of the secretary of state a complete statement of all charges made against such commissioner, and the findings thereon, together with a complete record of the proceedings.

(c) Each commissioner shall receive as compensation for his services the sum of ten dollars per day for all days in which he is actually engaged in the business of the commission which in no case shall exceed one hundred and fifty (\$150) dollars per month. The chairman shall also serve as executive officer of the commission, in charge of the office and affairs of the commission, and shall be entitled to additional compensation for such service, which shall be fixed by the industrial commission board and

approved by the governor. The executive officer of the commission shall not be financially interested in any business interfering or inconsistent with his duties. A member of the commission, or an employee of the commission, shall not serve on any committee of any political party. *As amended, Stats. 1915, 282.*

See State ex rel. Brown v. Nevada Industrial Commission, 40 Nev. 220, 222, under Stats. 1913, 137.

Continuous sessions.

SEC. 9. The commission shall be in continuous session and open for the transaction of business during all the business hours of each and every day excepting Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its records. All proceedings of the commission shall be shown on its record of proceedings, which shall be a public record and shall contain a record of each case considered, and the award made with respect thereto, and all voting shall be had by the calling of each member's name by the secretary and each vote shall be considered as cast.

Office at capitol—Printing.

SEC. 10. The commission shall keep and maintain its office at the capitol, in the town of Carson City, Nevada, and shall be provided by the board of capitol commissioners with suitable rooms. Except in cases of emergency, all necessary printing, including forms, blanks, envelopes, letterheads, circulars, pamphlets, bulletins, and reports required to be printed by said commission shall be done at the state printing office, and it is made the duty of the state printer to have such printing done as expeditiously as possible. *As amended, Stats. 1915, 283.*

Employees.

SEC. 11. The commission may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation. Such employments and compensation shall be first approved by the governor, and shall be paid out of the state treasury. The members of the commission, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants that may be employed shall be entitled to receive from the state treasury their actual and necessary expenses while traveling in the business of the commission. Such expenses shall be itemized and sworn to by the person who incurred the expense and allowed by the commission.

To adopt rules.

SEC. 12. The commission shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices, and the services thereof, in cases of accidents and injury to employees, the nature and extent of the proofs and evidence and the method of taking and furnishing the same, to establish the rights to benefits of compensation from the state insurance fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

Employers must furnish information.

SEC. 13. Every employer shall furnish the commission, upon request, all information required by it to carry out the purposes of this act. The commission or any member thereof, or any person employed by the commission for that purpose, shall have the right to examine under oath any employer or officer, agent or employee thereof.

Employers must fill blanks.

SEC. 14. Every employer receiving from the commission any blank with directions to fill the same, shall cause the same to be properly filled out as to answer fully and correctly all questions therein propounded, and if unable to do so shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the board within the period fixed by the commission for such return.

Power to administer oaths.

SEC. 15. Each member of the commission, the secretary and every inspector or examiner appointed by the commission shall, for the purposes contemplated by this act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

Disobedience to orders.

SEC. 16. In case of disobedience of any person to comply with the order of the commission, or subpoena issued by it or one of its inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the district judge of the county in which the person resides, on application of any member of the commission, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from such court on a refusal to testify therein.

Fees for serving subpoenas.

SEC. 17. Each officer who serves such subpoenas shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the commission or an inspector or examiner shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by any two members of the commission. No witness subpoenaed at the instance of a party other than the commission or any inspector shall be entitled to compensation from the state treasury unless the commission shall certify that his testimony was material to the matter investigated.

Depositions of witnesses.

SEC. 18. In an investigation, the commission may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by the law for like depositions in civil actions in the courts of record.

Transcript received in evidence.

SEC. 19. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any

party upon the payment of the fee therefor, as provided for transcript in courts of record.

Commission to furnish forms.

SEC. 20. The commission shall prepare and furnish blank forms, and provide in its rules for their distribution so that the same may be readily available, of application for benefits or compensation from the state insurance fund, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of insured employers to constantly keep on hand sufficient supply of such blanks.

Regulations as to payments of premiums.

SEC. 21. (a) Every employer electing to be governed by the provisions of this act, with the exception of the state, counties, municipal corporations, cities, and school districts, shall, on or before the first day of July, A. D. 1919, and thereafter, as required by the Nevada industrial commission, pay to the Nevada industrial commission for a state insurance fund premiums in such a percentage of his estimated total pay-roll for the ensuing month as shall be fixed by order of the Nevada industrial commission; *provided, however*, that all premium rates now in effect shall be continued in full force and effect until changed, altered or amended by order of the Nevada industrial commission.

Every employer electing to be governed by the provisions of this act, who shall enter into business or resume operations subsequent to July 1, 1919, shall, before so commencing or resuming operations, as the case may be, notify the commission of such fact, accompanying such notification with an estimate of his monthly pay-roll, and shall make payment of the premium on such pay-roll for the first three months of operation, and thereafter as required by order of the Nevada industrial commission.

The Nevada industrial commission may require all premiums required by this act to be paid for three months in advance upon the estimated pay-roll of the employer, unless the commission be satisfied of the financial responsibility of the employer, or unless a good and sufficient surety bond for the payment of premiums be given by the employer to the Nevada industrial commission.

Every employer electing to be governed by the provisions of the act shall, on or before the twenty-fifth day of each month, furnish the Nevada industrial commission with a true and accurate pay-roll showing the aggregate number of shifts worked during the preceding month, the total amount paid to employees for services performed during said month, and a segregation of employment in accordance with the requirements of the commission. An adjustment of accounts shall then be made upon the basis of the actual pay-roll, and should the amount of the actual premium due exceed the estimated premium for the period, the amount of the deficiency shall be forwarded to the commission within thirty days after receipt by the employer of demand therefor.

As soon as possible after the expiration of each quarter-year, beginning with September 30, 1919, it shall be the duty of the state auditor, and the auditor of each county, and the clerk of each municipal corporation, city, and school district, to furnish the Nevada industrial commission with a true and accurate pay-roll of said state, county, municipal corporation, city or school district, showing the aggregate number of shifts worked during the preceding quarter, the total amount paid to the employees for services performed during said month, and a segregation of employment in accordance with the requirements of the commission; and it shall be the duty of each of the said auditors and clerks to make up and submit to

the respective governing boards of the state and each county, municipal corporation, city, and school district, for approval a claim for the amount of premiums due the commission. Any official who fails or refuses to comply with the provisions of this section shall be guilty of a misdemeanor for each and every offense, and, upon conviction thereof, shall be punished by a fine of not less than fifty (\$50) dollars nor more than two hundred (\$200) dollars.

Every employer who shall fail on demand of the commission to furnish an estimated pay-roll and make payment as above provided, shall be liable to a penalty in three times the amount of the premium on such pay-roll, to be collected in a civil action in the name of the Nevada industrial commission and paid into the state insurance fund.

[Section 21a of original act has been merged into paragraph (b) of this section.]

(b) The Nevada industrial commission shall have the power, as experience and conditions demand, to increase or decrease the rates above provided; sixty days' notice of any change in rates shall be given before the same shall become effective; the commission shall have the power, and it shall be its duty, to classify occupations with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premiums of the same, based upon the total pay-roll and number of employees in each of said classes of occupation and sufficiently large to provide an adequate fund for the compensation provided for in this act, and to create a surplus sufficiently large to guarantee a satisfactory state insurance fund from year to year.

(c) In that the intent is that the state insurance fund and the accident benefit fund shall ultimately be neither more nor less than self-supporting, the actual loss experience of the several classes of those funds shall be ascertained as soon as practical after the first day of July, 1919, for the first five years operation of the fund, and annually thereafter within six months after the close of each fiscal year, and should it then be shown that there exists an excess of assets over liabilities, such liabilities to include the necessary reserves and the sum of \$100,000 for the catastrophe hazard, then the commission shall either allow a credit to the account of or declare a cash dividend to each individual member of any class which is shown to have made contributions in excess of liabilities properly chargeable to such class, the amount of the credit so allowed or cash dividend declared to be proportionate to the amount of money said individual member of such class has paid or contributed to said fund. *As amended, Stats. 1915, 283; 1917, 439; 1919, 306.*

Higher rate, when—Merit rating, when.

SEC. 22. (a) Whenever an establishment or work is dangerous in comparison with other like establishments or works, the Nevada industrial commission may advance its classification of risk and premium rates in proportion to the hazard. Such advancement of classification of risks and premium rates may be made without previous notice.

(b) The Nevada industrial commission shall have the power in its discretion to lower the premium rate of or declare a rebate to any establishment or plant which has contributed to the state insurance fund for one year or more, if and as experience shall show it to maintain such a high standard of safety or accident prevention as to differentiate it from other like establishments or plants; *provided*, that such reduction of premium rate or rebate of premium contribution shall not exceed ten per cent (10%) where the accident experience of such establishment or plant for a period of twelve months is less than sixty per cent (60%) of the average experience for the same period of like establishments or plants of its classification, nor fifteen per cent (15%) where the accident experience of such

establishment or plant for two consecutive periods of twelve months is less than sixty per cent (60%) of the average experience for the same period of like establishments or plants of its classification. *As amended, Stats. 1915, 286; 1919, 308.*

Accident benefits.

SEC. 23. (a) Every injured employee within the provisions of this act shall be entitled to receive, and shall receive promptly, such medical, surgical and hospital or other treatment, nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may be reasonably required at the time of the injury and within ninety days thereafter, which may be extended to one year by the Nevada industrial commission. The benefits conferred by this paragraph upon the injured employee shall hereinafter be termed "Accident Benefits."

(b) For the purpose of providing a fund to take care of said accident benefits as in this act provided the Nevada industrial commission is authorized and directed to collect a premium upon the total pay-roll of every employer, except as hereinafter provided, in such a percentage as the commission shall by order fix; every employer paying such premium shall be relieved from furnishing accident benefits, and the same shall be provided by the Nevada industrial commission. Every employer paying such premium for accident benefits may collect one-half thereof, not to exceed one dollar per month from each employee, and may deduct the same from the wages of such employee.

The Nevada industrial commission shall have the authority to adopt such reasonable rules and regulations as may be necessary to carry out the provisions of this subdivision of this section. All fees and charges for such accident benefits shall be subject to regulation by the commission, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living.

The state insurance fund provided for in this act shall not be liable for any accident benefits provided by this section, but the fund provided for accident benefits shall be a separate and distinct fund, and shall be so kept.

(c) It shall be the duty of every employer accepting the provisions of this act, immediately upon the occurrence of any injury to any of his employees, to render to such employee all necessary first aid, including cost of transportation of the injured employee from the place of injury to the nearest place of proper treatment where the injury is such as to make it reasonably necessary for such transportation; such employer shall forthwith notify the commission of such accident, giving the name of the injured employee, the nature of the accident and where and by whom the injured employee is being treated, and the date of the accident. Every employer paying accident benefit premiums to the Nevada industrial commission furnishing such first aid shall be entitled to receive from the commission the amount of such expenditure reasonably made.

(d) Every employer operating under this act alone or together with other employers may make arrangements for the purpose of providing accident benefits as defined in this act for injured employees and such employer may collect one-half of the cost of such accident benefits from their collective employees, not to exceed one dollar per month from any one employee, and may deduct the same from the wages of each employee. Employers electing to make such arrangements for providing accident benefits shall notify the Nevada industrial commission of such election and render a detailed statement of the arrangements made. Every employer who maintains a hospital of any kind for his employees, or who contracts with a physician for the hospital care of injured employees, shall, on or before the thirtieth day of January of each year, make a written report to the Nevada

industrial commission for the preceding year, which report shall contain a statement showing: (1) Total amount of hospital fees collected, showing separately the amount contributed by the employees and the amount contributed by the employers; (2) an itemized account of the expenditures, investments, or other disposition of such fees, and (3) a statement showing what balance, if any, remains. Such reports shall be verified by the employer, if an individual; by a member, if a partnership; by the secretary, president, general manager or other executive officer, if a corporation; by the physician, if contracted to a physician.

Every employer who fails to so notify said Nevada industrial commission of such election and arrangements, or who fails to render the financial report required herein, shall be liable for accident benefits as heretofore provided by subdivision (b) of this section.

(e) If it be shown or the commission finds that the employer is furnishing the requirements of medical, surgical, or hospital aid or treatment provided for in this act in such a manner that there are reasonable grounds for believing that the health, life, or recovery of the employee is being endangered or impaired thereby, the commission may, upon application of the employee or upon its own motion, order a change in the physician or other requirements, and if the employer fails to promptly comply with such order, the injured employee may elect to have such medical, surgical, or hospital aid or treatment provided by or through the Nevada industrial commission, in which event the cause of action of said injured employee against the employer or hospital association shall be assigned to the Nevada industrial commission for the benefit of the state insurance fund, and the Nevada industrial commission shall furnish to said injured employee the medical, surgical, or hospital aid or treatment provided for in this act. *As amended, Stats. 1917, 439; 1919, 309.*

Premiums paid to state treasurer.

SEC. 24. All premiums provided for in this act shall be paid to the state treasurer, and shall constitute the state insurance fund for the benefit of employees of employers and for the benefit of dependents of such employees, and shall be disbursed as hereinafter provided.

Compensation provisions.

SEC. 25. Every employee in the employ of an employer within the provisions of this act, who shall be injured by accident arising out of and in the course of employment, or his dependents, as hereinafter defined, shall be entitled to receive the following compensation:

(A) DEATH BENEFITS

If the injury causes death, the compensation shall be known as a death benefit, and shall be payable in the amount and to and for the benefit of the persons following:

1. Burial expenses, not to exceed one hundred and twenty-five (\$125) dollars, in addition to the compensation payable under this act.

2. To the widow, if there is no child, thirty per centum of the average wage of the deceased. This compensation shall be paid until her death or remarriage, with two years' compensation in one sum upon remarriage.

3. To the widower, if there is no child, thirty per centum of the average wage of the deceased, if wholly dependent for support upon the deceased employee at the time of her death. This compensation shall be paid until his death or remarriage.

4. To the widow or widower, if there is a child or children, the compensation payable under clause one (1) or clause two (2), and in addition the additional amount of ten per centum of such wage for each such child until the age of eighteen years. In case of the subsequent death of such

surviving wife (or dependent husband) any surviving child of the deceased employee shall have his compensation increased to fifteen (15) per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years; *provided*, that the total amount payable shall in no case exceed sixty-six and two-thirds per cent of such wage. If the children have a guardian other than the surviving widow or widower, the compensation on account of such children may be paid to such guardian. The compensation payable on account of any child shall cease when he dies, marries, or reaches the age of eighteen years, or if over eighteen years, and incapable of self-support, becomes capable of self-support.

5. If there be a surviving child or children of the deceased under the age of eighteen years, but no surviving wife (or dependent husband) then for the support of each child until the age of eighteen years, fifteen per centum of the wages of the deceased; *provided*, that the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages.

6. If there be no surviving wife (or dependent husband) or child under the age of eighteen years, there shall be paid to a parent, if wholly dependent for support upon the deceased employee at the time of his death, twenty-five per centum of the average monthly wage of the deceased during dependency, with an added allowance of ten per centum if two dependent parents survive; to the brothers or sisters, under the age of eighteen years, if one is wholly dependent upon the deceased employee for support at the time of injury causing death, twenty per centum of the average monthly wage for the support of such brother or sister, until of the age of eighteen years. If more than one brother or sister is wholly dependent, thirty per centum of the average monthly wage at the time of injury causing death, divided among such dependents share and share alike. If there is no one of them wholly dependent, but one or more partly dependent, ten per centum divided among such dependents share and share alike.

7. In all other cases, questions of total or partial dependency shall be determined in accordance with the facts as the facts may be at the time of the injury. If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid shall be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the employee to such partial dependents bears to the average wage of deceased at the time of the injury resulting in his death. The duration of such compensation to partial dependents shall be fixed by the commission in accordance with the facts shown, but in no case exceed compensation for one hundred months.

8. Compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the commission may, from time to time, apportion such compensation between them in such way as it deems best for the interests of all beneficiaries.

If a dependent to whom a death benefit is to be paid is an alien not residing in the United States, the compensation shall be only sixty (60) per cent of the amount or amounts above specified.

9. Any excess of wages over one hundred and twenty (\$120) dollars a month shall not be taken into account in computing compensation for death benefits.

10. In such cases where compensation is awarded to the widow, dependent children, or persons wholly dependent, no lump-sum settlements shall be allowed.

11. In case of the death of any dependent specified in the foregoing enumeration before the expiration of the time named in the award, funeral expenses not to exceed one hundred and twenty-five (\$125) dollars shall be paid.

(B) TOTAL DISABILITY

1. Temporary total disability: For temporary total disability, if there be no one residing in the United States totally dependent upon the workman at the time of the injury, compensation of sixty (60%) per cent of the average monthly wage, but not more than seventy-two (\$72) dollars nor less than thirty (\$30) dollars per month, but not exceeding one hundred months, during the period of such disability, total amount not to exceed seven thousand two hundred (\$7,200) dollars; if there be persons residing in the United States totally dependent for support upon the workman, compensation as provided herein with an additional allowance of ten (\$10) dollars per month for such dependents during the period of such disability.

2. Permanent total disability: In cases of total disability adjudged to be permanent, compensation of sixty (60%) per cent of the average monthly wage, but not less than thirty (\$30) dollars per month nor more than sixty (\$60) dollars per month during the life of the injured person.

In cases of the following specified injuries, in the absence of proof to the contrary, the disability caused thereby shall be deemed total and permanent:

1. The total and permanent loss of sight of both eyes.
2. The loss by separation of both legs at or above the knee.
3. The loss by separation of both arms at or above the elbow.
4. An injury to the spine resulting in permanent and complete paralysis of both legs or both arms, or one leg and one arm.
5. An injury to the skull resulting in incurable imbecility, or insanity.
6. The loss by separation of one arm at or above the elbow, and one leg by separation at or above the knee may be deemed a permanent total disability.

The above enumeration is not taken as exclusive; and in all other cases, permanent total disability shall be determined in accordance with the facts.

(C) PARTIAL DISABILITY

1. For temporary partial disability, sixty (60%) per cent of the difference between the wages earned before the injury and the wages which the injured person is able to earn thereafter, but not more than forty (\$40) dollars per month for a period not to exceed sixty (60) months during the period of said disability. For the purpose of this provision any excess of wages over one hundred and twenty (\$120) dollars per month shall not be taken into account in computing compensation for temporary partial disability.

2. In case of any of the following specified injuries, the disability caused thereby shall be deemed a permanent partial disability, and compensation of fifty (50%) per cent of the average monthly wage, subject to a minimum of thirty (\$30) dollars per month and a maximum of sixty (\$60) dollars per month, shall be paid in addition to the compensation paid for temporary total disability for the period named in the following schedule:

- (a) For the loss of a thumb, fifteen (15) months.
- (b) For the loss of a first finger, commonly called the index finger, nine (9) months.
- (c) For the loss of a second finger, seven (7) months.
- (d) For the loss of the third finger, five (5) months.
- (e) For the loss of the fourth finger, commonly called the little finger, four (4) months.
- (f) The loss of a distal or second phalange of the thumb, or the distal or third phalange of the first, second, third, or fourth finger, shall be considered a permanent partial disability, and equal to the loss of one-half of such

thumb or finger, and compensation shall be one-half of the amount specified for the loss of the entire thumb or finger.

(g) The loss of more than one phalange of the thumb or finger shall be considered as the loss of the entire finger or thumb; *provided, however*, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(h) For the loss of a great toe, seven (7) months.

(i) For the loss of one of the other toes other than the great toe, two and one-half (2½) months.

(j) However, the loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

(k) The loss of more than one phalange shall be considered as the loss of the entire toe.

(l) For the loss of a major hand, fifty (50) months; the loss of a minor hand, forty (40) months.

(m) For the loss of a major arm, sixty (60) months; for the loss of a minor arm, fifty (50) months.

(n) For the loss of a foot, forty (40) months.

(o) For the loss of a leg, fifty (50) months.

(p) For the loss of an eye by enucleation, thirty (30) months.

(q) The permanent and complete loss of sight in one eye without enucleation, twenty-five (25) months.

(r) For permanent and complete loss of hearing in one ear, twenty (20) months.

(s) For permanent and complete loss of hearing in both ears, sixty (60) months.

(t) The permanent and complete loss of the use of a finger, toe, arm, hand, foot, or leg may be deemed the same as the loss of any such member by separation.

(u) For the partial loss of use of a finger, toe, arm, hand, foot, leg, or partial loss of sight or hearing, fifty (50%) per cent of the average monthly wage during that proportion of the number of months in the foregoing schedule provided for the complete loss of use of such member, or complete loss of sight or hearing, which the partial loss of use thereof bears to the total loss of use of such member or total loss of sight or hearing.

(v) Facial disfigurement: For permanent disfigurement about the head or face, which shall include injury to or loss of teeth, the commission may allow such sum for compensation thereof as it may deem just, in accordance with the proof submitted, for a period not to exceed twelve (12) months.

(w) In all cases of permanent partial disability, not otherwise specified in the foregoing schedule, the percentage of disability to the total disability shall be determined. For the purpose of computing compensation for a disability that is partial in character but permanent in quality, the sum of sixty (\$60) dollars per month for the period of one (1) month shall represent a one (1%) per cent disability.

In determining the percentage of disability, consideration shall be given, among other things, to any previous disability, the occupation of the injured employee, the nature of the physical injury, and the age of the employee at the time of the injury.

(x) Where there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

(y) The commission may adopt a schedule for rating permanent disabilities and reasonable and proper rules to carry out the provisions of this subsection.

No compensation shall be payable for the death or disability of an employee, if his death be caused by, or in so far as his disability may be aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or follow any competent and reasonable surgical treatment or medical aid. *As amended, Stats. 1915, 286; 1917, 441; 1919, 314.*

Dependency, how determined.

SEC. 26. (a) The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee:

1. A wife upon a husband whom she has not voluntarily abandoned at the time of the injury;

2. A husband, mentally or physically incapacitated from wage earning, upon a wife whom he has not voluntarily abandoned at the time of injury;

3. A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of eighteen years, or over that age, if physically or mentally incapacitated from wage earning, upon the parent with whom he or they are living at the time of the injury resulting in the death of such parent, there being no surviving parent. Step-parents may be regarded in this act as parents, if the fact of dependency is shown, and a step-child or step-children may be regarded in this act as a natural child or children, if the existence and fact of dependency is shown.

(b) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident or injury to the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefits shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or to their legal guardians or trustees. *As amended, Stats. 1915, 290; 1917, 446.*

Compensation begins, when.

SEC. 27. No compensation shall be paid under this act for an injury which does not incapacitate the employee for a period of at least seven days from earning full wages, but if the incapacity extends beyond the period of seven days, compensation shall begin on the eighth day after the injury; *provided, however*, that if such disability continues for one week beyond the period of said seven days, such compensation shall be computed from the date of the injury. *As amended, Stats. 1915, 290; 1919, 311.*

Cannot be assigned or attached.

SEC. 28. Compensation payable under this act, whether determined or due, or not, shall not, prior to the issuance and delivery of the warrant therefor, be assignable; shall be exempt from attachment, garnishment, and execution, and shall not pass to any other person by operation of law; *provided, however*, that the payments to the consul-general, consul, vice-consul general, or vice-consul, of the nation of which any dependent of a deceased employee is a resident or subject, or a representative of such consul-general, consul, vice-consul general, or vice-consul, of any compensation due under this act to any dependent residing outside of the United States, any power of attorney to receive or receipt for the same to the contrary notwithstanding, shall be as full a discharge of the benefits or compensation payable under this act as if payments were made directly to the beneficiary. *As amended, Stats. 1915, 291.*

Release or waiver void.

SEC. 29. No employer or workman shall exempt himself from the burden,

or waive the benefits of this act by any contract, agreement, rule, regulation or device; and any such contract, agreement, rule, regulation or device shall be absolutely void.

Obsolete.

SEC. 30. Upon the marriage of a widow, she shall receive once and for all, a lump sum equal to twelve times her monthly allowance, not to exceed, however, the sum of \$300; *provided, however*, that allowance shall be made by the commission for the support of minor children under the age of sixteen years; the total amount thereof to be not less than \$10 nor more than \$35 per month, to be fixed by the commission. *Repealed by implication; see paragraphs 2 and 10, under "Death Benefits," section 25.*

Lump-sum payment, when.

SEC. 31. The Nevada industrial commission may, in its discretion, allow the conversion of the compensation herein provided for into a lump-sum payment, not to exceed the sum of \$5,000, under such rules and regulations and system of computation as may be devised for obtaining the present value of such compensation.

[Does not apply to general dependents, see paragraph 10, section 25.]

Must submit to medical examination, when.

SEC. 32. (a) Any workman entitled to receive compensation under this act is required, if requested by the commission, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman, and as may be provided by the rules of the commission. The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. If the employee refuses to submit to any such examination, or obstructs the same, his right to compensation shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period. Any physician who shall make or be present at any such examination may be required to testify as to the result thereof.

(b) If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the commission may, in its discretion, reduce or suspend the compensation of any such injured employee.

(c) If, for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be guilty of a misdemeanor, and if a claimant he shall forfeit all right to compensation under this act after conviction for such offense. *As amended, Stats. 1915, 391.*

Notice of injury and application for compensation.

SEC. 33. (a) Every employer electing to be governed by the provisions of this act, and every physician and surgeon who attends an injured employee, within the purview of this act, is hereby required to file with the commission, under such rules and regulations as the commission may from time to time make, a full and complete report of every known injury to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such report shall be furnished to the commission in such form and in such detail as the commission may, from time to time, prescribe and shall make special answers

to all questions required by the commission under its rules and regulations. It shall be unlawful for any person, firm or corporation, agent or officer of any firm or corporation, or any attending physician or surgeon, to fail or refuse to comply with any of the provisions of this section; and any person, firm, or corporation, agent or officer of any firm or corporation, or physician or surgeon, who fails or refuses to comply with the provisions of this section, shall be guilty of a misdemeanor for each and every offense, and, upon conviction thereof, shall be punished by a fine of not less than fifty (\$50) dollars nor more than two hundred (\$200) dollars.

(b) Any physician, having attended an employee within the purview of this act, in a professional capacity, may be required to testify before the commission when it shall so direct. Information gained by the attending physician or surgeon, while in attendance on the injured man, shall not be considered a privileged communication, if required by the commission for a proper understanding of the case and a determination of the rights involved.

(c) Whenever any accident occurs to any employee, it shall be the duty of the employee to forthwith report such accident and the injury resulting therefrom to the employer, and it shall also be the duty of any physician employed by such injured employee to forthwith report such accident and the injury resulting therefrom to the employer and to the Nevada industrial commission. Whenever any accident occurs to any employee, and knowledge of same comes to the attention of the employer by such report or otherwise, the employer may at once designate and send the physician so chosen by such employer and authorized by such employer in writing; and the physician, so chosen, shall be permitted by the employee or any person or persons in charge of said employee to make one examination of said injured employee in order to ascertain the character and extent of the injury occasioned by such accident. Thereupon, it shall be the duty of the said physician, so chosen, to forthwith report to the employer and to the Nevada industrial commission the character and extent of the said injury, as so ascertained by said physician.

(d) If the happening of the said accident or the infliction of said injury to said employee shall not have been reported by said employee or his said physician forthwith, as above described and immediately after the happening of said accident and injury, or if the said injured employee or those in charge of him (the injured employee being a party to the refusal) shall refuse to permit the employer's physician, so chosen, to make such examination, no compensation shall be paid for the injury so claimed to result from said accident; but it shall be within the discretion of the Nevada industrial commission to relieve said injured person or his dependents from such loss or forfeiture of compensation, if the said Nevada industrial commission shall be of the opinion, after investigation, that the circumstances attending the failure on the part of the employee, or of his physician, to report said accident and injury are such as to have excused the said employee and his physician for such failure to so report, and that such relieving of the employee or his dependents from the consequences of such failure to report will not result in an unwarrantable charge against said state insurance fund. *As amended, Stats. 1917, 446.*

Regulations concerning application.

SEC. 34. (a) Where a workman is entitled to compensation under this act, he shall file with the department his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury, the parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

Notice of injury to be given, when.

SEC. 34½. Notice of the injury for which compensation is payable under this act shall be given to the commission as soon as practicable, but within thirty days after the happening of the accident. In case of the death of the employee resulting from such injury, notice shall be given to the commission as soon as practicable, but within sixty days after such death. The notice shall be in writing and contain the name and address of the injured employee and state in ordinary language the time, place, nature and cause of the injury and be signed by said injured employee, or by a person in his behalf, or in case of death, by one or more of his dependents or by a person on their behalf. No proceeding under this act for compensation for an injury shall be maintained unless the injured employee, or some one in his behalf, files with the commission a claim for compensation with respect to said injury within ninety days after the happening of the accident, or, in case of death, within one year after such death. The notice required by this section shall be served upon the commission, either by delivery to and leaving with it a copy of such notice, or by mailing to it by registered mail a copy thereof in a sealed, postpaid envelope addressed to the commission at its office, and such mailing shall constitute complete service; the failure to give such notice or to file such claim for compensation within the time limit specified in this section shall be a bar to any claim for compensation under this act, but such failure may be excused by the commission on one or more of the following grounds: (1) That notice for some sufficient reason could not have been made. (2) That failure to give such notice will not result in an unwarrantable charge against the state insurance fund. (3) That the employer had actual knowledge of the occurrence of the accident resulting in such injury. (4) That failure to give notice was due to employee's or beneficiary's mistake or ignorance of fact or of law, or of his physical or mental inability, or to fraud, misrepresentation or deceit. *Added, Stats. 1917, 448.*

Books, records and pay-rolls of employer open to commission—Penalty.

SEC. 35. The books, records, and pay-rolls of the employer pertinent to the administration of this act shall always be open to inspection by the commission or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the pay-roll, the men employed, and such other information as may be necessary for the commission and its management under this act. Refusal on the part of the employer to submit said books, records and pay-rolls for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the Nevada industrial commission and paid into the accident fund, and the

individual who shall personally give such refusal shall be guilty of a misdemeanor.

Misrepresentation, how punished.

SEC. 36. Any employer who shall misrepresent to the department the amount of pay-roll upon which the premium under this act is based shall be liable to the Nevada industrial commission in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the Nevada industrial commission shall be enforced in a civil action in the name of the Nevada industrial commission. All sums collected under this section shall be paid into the accident fund.

SEC. 37. Repealed, Stats. 1917, 449.

Commission to prosecute, defend and maintain actions.

SEC. 38. The Nevada industrial commission is hereby authorized and empowered to prosecute, defend and maintain actions in the name of the commission for the enforcement of the provisions of this act, and verification of any pleading, affidavit or other paper required may be made by any member of the commission or by the secretary thereof. In any action or proceeding or in the prosecution of any appeal by the commission, no bond or undertaking shall ever be required to be furnished by the commission.

Penalty for failure to maintain safeguards—Exception.

SEC. 39. If any workman be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance or any departmental regulation under any statute, or be at the time of the injury of less than the maximum age prescribed by law for the employment of the minor in the occupation in which he shall be engaged when injured, the employer shall be liable to the Nevada industrial commission for a penalty of not less than \$300 or more than \$2,000, to be collected in a civil action at law by the commission.

The foregoing provision of this act shall not apply to the employer if the absence of such guard or such protection be due to the removal thereof by the injured workman himself, or with his knowledge, by any fellow-workman, unless such removal be by order or direction of the employer or superintendent or foreman of the employer. If the removal of such guard or protection be by the workman himself, or be by his consent, by any of his fellow-workmen, unless done by order or direction of the employer or superintendent or foreman of the employer, the compensation of such injured workman, as provided for by section 25 of this act, shall be reduced twenty-five per cent.

State insurance fund — Custodian — Investment — Sale of bonds — Official oath—Bonds—Seal.

SEC. 40. (a) The premiums, contributions, penalties, properties, or securities paid, collected, or acquired by operation of this act shall constitute a fund to be known as the "State Insurance Fund." All disbursements from the state insurance fund shall be paid by the state treasurer upon warrants or vouchers of the Nevada industrial commission authorized and signed by any two members of the commission. The state treasurer shall be liable on his official bond for the faithful performance of his duty as custodian of the state insurance fund. The State of Nevada shall not be liable for the payment of any compensation or any salaries or expenses in the administration of this act, save and except from the state insurance fund, but shall be responsible for the safety and preservation of the state insurance fund.

(b) The Nevada industrial commission may, pursuant to a resolution of the commission, approved by the governor, invest any of the surplus or reserve of said fund in bonds of the United States, in the bonds of this or other states, in the bonds of any county of the State of Nevada or other states, in farm-loan bonds of the federal land banks, or in bonds of incorporated cities or school districts of the State of Nevada. The commission shall make due and diligent inquiry as to the financial standing of the state or states, county or counties, city or cities, school district or school districts, whose bonds or securities it proposes to purchase and shall also require the attorney-general to give his legal opinion in writing as to the validity of any act or acts of any state or county or city or school district under which such bonds are issued.

All such bonds or securities shall be placed in the hands of the state treasurer, who shall be the custodian thereof. He shall collect the principal and interest thereon when due, and pay the same into the state insurance fund. He shall notify the Nevada industrial commission of the amounts so paid in the state insurance fund, giving full details of the transaction. The state treasurer shall pay all vouchers drawn on the state insurance fund for the making of such investments, when signed by two members of the commission, upon delivery of such bonds or securities to him when there is attached to such vouchers a copy of the resolution of the commission authorizing the investment, approved by the governor, said copy to be certified by the secretary under seal of the commission. The commission may, upon its resolution approved by the governor, sell any of such bonds or securities.

(c) The state treasurer may, upon written authority of the Nevada industrial commission, approved by the governor, deposit twenty-five (25%) per cent of said fund in a bank or banks in the State of Nevada, fifteen (15%) per cent thereof to be deposited in open accounts bearing interest at not less than three (3%) per cent per annum, and ten (10%) per cent thereof to be deposited in time accounts, bearing interest at not less than four (4%) per cent per annum; *provided, however*, that such bank or banks in which deposits may be made shall give to the Nevada industrial commission a good and sufficient deposit bond guaranteeing said Nevada industrial commission against any loss of said deposits by reason of the failure, suspension or otherwise of said bank. Interest earned by such portion of the state insurance fund which may be deposited in any bank or banks, as herein provided, shall be placed to the credit of the state insurance fund.

(d) Each member of the commission, before entering upon the duties of his office, shall give a good and sufficient bond running to the State of Nevada, and shall take the oath prescribed by the constitution, in the penal sum of ten thousand dollars, conditioned that he shall faithfully discharge the duties of his office; said bonds shall be signed by a surety company duly authorized to do business in this state, or by two or more individuals as surety or sureties; shall be subject to approval by the governor, and shall then be filed with the secretary of state. If surety-company bonds be furnished, the premium therefor shall be paid out of the state insurance fund as other expenses of the commission are paid.

(e) The commission shall have a seal upon which shall be inscribed the words "Nevada Industrial Commission—State of Nevada." Its seal shall be fixed to all orders, proceedings, and copies thereof, and to such other instruments as the commission may direct. All courts shall take judicial notice of such seal, and any copy of any record or proceeding of the commission certified under such seal shall be received in all courts as evidence of the original thereof. *As amended, Stats. 1915, 292; 1919, 311.*

Audit of accounts must be made.

SEC. 40½. It shall be the duty of the industrial commission board, provided for by section 8 of this act, annually or as often as they may deem necessary to make an audit of all books of accounts and record and of funds and securities of the Nevada industrial commission, and said industrial commission board is authorized to employ and fix the compensation of a competent accountant for the purpose of making such audit or audits, the expenses thereof to be paid out of the state insurance fund. *Added, Stats. 1917, 449.*

Extra territorial provision.

SEC. 41. If a workman or employee within the provisions of this act, who has been hired in this state, and whose usual and ordinary duties of such employment are confined to the state, is sent out of the state on business or employment of his employer, and receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to receive compensation according to the provisions of this act, even though such injury was received outside of this state. *As amended, Stats. 1915, 293.*

Title of act.

SEC. 42. This act shall be known as the "Nevada Industrial Insurance Act."

Exceptions to application of act—Election by excluded employments.

SEC. 43. (a) This act shall apply to all employers of labor in the State of Nevada and their employees and dependents of their employees, but excludes any employee engaged in farm or agricultural labor, stock or poultry raising, or household domestic service, except as otherwise provided herein; and no contract of employment, insurance, relief benefit, or indemnity, or any other device shall modify, change or waive any liability, created by this act; and such contract of employment, insurance, relief benefit, or indemnity, or other device, having for its purpose the waiver or modification of the terms or liability created by this act, shall be void.

(b) Any employer of labor in the State of Nevada, having in his employment any employee excluded from the benefits of the act under subdivision (a) of this section and any such employee may, by their joint election, elect to come under the provisions of this act in the manner hereinafter provided.

(c) Such election on the part of the employer shall be made by filing with the commission a written statement that he accepts the provisions of the Nevada industrial insurance act, which, when filed, shall operate to subject him to the provisions of said act, and of all acts amendatory thereof, until such employer shall thereafter file in the office of the commission a notice in writing that he withdraws his election.

(d) Any employee in the service of any such employer shall be deemed to have accepted, and shall be subject to the provisions of the Nevada industrial insurance act and of any act amendatory thereof, if, at the time of the accident for which compensation is claimed:

(1) The employer charged with such liability is subject to the provisions of this act, whether an employee has actual notice thereof or not; and

(2) Such employee shall not have given to his employer and to the Nevada industrial commission notice in writing that he elects not to be subject to the provisions of said act.

(e) Any such employee having the right under the provisions of this act to elect not to be subject to the provisions thereof who has rejected the provisions of this act may at any time thereafter elect to waive such

acceptance by giving notice in writing to his employer and to the Nevada industrial commission, which shall become effective when filed with the Nevada industrial commission.

(f) Employers becoming contributors to the state insurance fund or the accident benefit fund, pursuant to the provisions of this section, shall be placed in a separate class, the premium rates of which shall be sufficient to provide an adequate fund for the payment of the proportionate administrative expense and compensation on account of injuries and death of employees of this class. *As amended, Stats. 1915, 293; 1919, 312.*

Validity not impaired in certain cases.

SEC. 44. If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workman, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 21 of this act for the creation of the insurance fund, or the provisions of this act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman, shall be held invalid, the entire act shall be thereby invalidated except the provisions of section 46, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

Disposition of funds if compensation provisions adjudged invalid.

SEC. 45. If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death; *provided*, that such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the insurance fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the insurance fund the payment provided for by section 21, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited, but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

Disposition of fund if act repealed.

SEC. 46. If this act shall be hereafter repealed, all moneys which are in the insurance fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Not retroactive.

SEC. 47. This act shall not affect any action pending or cause of action existing on June 30, 1913.

Secs. 48 and 49, relating to time of taking effect and repealing acts in conflict with this act, omitted.

Each section of act independent.

SEC. 50. It is hereby expressly provided that in the event any section of this act or the act of which this act is amendatory, shall be held by any court to be void or inoperative for any cause, such holding shall not affect any other section or provision contained in this act or the act of which this act is amendatory. *Added, Stats. 1919, 313.*

Effective, when.

SEC. 51. Except as otherwise provided therein, this act shall be effective on and after July 1, 1919. *Added, Stats. 1919, 314.*

Sec. 24. It was held that the "state treasury" did not include the state insurance fund, which was a special fund given to the treasurer in trust, as distinguished from the general taxes and revenues of the state, and the requirement for presentation of claims to the board of examiners and issuance of warrants by the controller did not apply. *State ex rel. Beebe v. McMillan, 36 Nev. 384-388 (136 P. 108).*

Mandamus is not the proper remedy to compel the industrial commission to award an injured workman compensation, under this act, as amended by Stats. 1915, 279, since such workman has a speedy and adequate remedy in an action at law against the commission. *State ex rel. Brown v. Nevada Industrial Commission, 40 Nev. 220, 222-225 (161 P. 516).*

Mandamus is an appropriate remedy to compel the industrial commission to pay a final judgment of compensation obtained by an injured workman in an action at law against the commission, where it refuses to pay such final judgment. *Id.*

This act sufficiently embraces within its title the purpose expressed by section 1, subd. b, thereof, making counties and other municipal corporations subject to the act, and therefore does not offend Const. art. 4, sec. 17, providing that every law shall embrace but one subject, which shall be briefly expressed in its title. *Nevada Industrial Commission v. Washoe County, 41 Nev. 437, 441, 449, 450 (171 P. 511).*

Section 1 of this act, subd. b, making counties subject thereto, is not unconstitutional as depriving counties of due process of law, the money required to be paid by the counties going for a public purpose of supporting the indigent, which is a legitimate charge on the people of the state and its various subdivisions. *Id.*

This section is not unconstitutional as discriminatory; the classification of counties being reasonable. *Id.*

This act cited, *Potter v. L. A. & S. L. R. Co., 42 Nev. 374 (177 P. 934).*

Under this act creating a presumption in cases of personal injuries to an employee in the course of his employment, and placing upon an employer declining to come within the act the burden of proof to rebut this presumption, there was no error in charging that, in determining whether the presumption had been overcome, the jury might properly consider all evidence, both that of plaintiff and that of defendant. *O'Brien v. L. V. & T. R. Co., 242 F. 850, 851.*

BUREAU OF INDUSTRY, AGRICULTURE, AND IRRIGATION

4486-4494. These sections creating the state bureau, and the office of commissioner of industry, agriculture and irrigation, and defining its objects and purposes, do not, by section 7, appropriating \$25,000 to carry out "the purposes of this act," and providing that all disbursements from it shall be on certificate of the commissioner, approved by the state board of examiners, indicate that such appropriation includes the salary of the commissioner, which section 6 fixes and declares payable in equal monthly installments by the state treasurer on warrants drawn by the state controller; Const. art. 5, sec. 21, expressly excluding salaries of officers "fixed by law" from the claims against the state which the board of examiners shall pass on, and "purposes" indicating something to be accomplished rather than an existing fact, so that the bureau and office of commissioner were but means for the subsequent accomplishment of the purposes of the act. *State ex rel. Norcross v. Eggers, 35 Nev. 250, 255-257 (128 P. 986).*

4486-94. Repealed, Stats. 1915, 14.

4486. Cited, *State ex rel. Mighels v. Eggers, 36 Nev. 365 (136 P. 104).*

4491. In the absence of anything to the contrary in the statute, this section fixing the salary of the commissioner of industry, agriculture and irrigation, and directing that it be payable in equal monthly installments by the state treasurer on warrants drawn by the state controller, is a sufficient appropriation out of the state general fund. *State ex rel. Norcross v. Eggers*, 35 Nev. 250, 255, 256 (128 P. 986).

BOARD OF INVESTMENTS

An Act to create a state board of investments of the state permanent school fund, defining its powers and duties, and other matters properly connected therewith, and repealing all acts and parts of acts in conflict herewith.

Approved March 24, 1917, 399

Board of finance to be board of investments.

SECTION 1. There is hereby created the state board of investments, which will have charge of all the investments of moneys and the sale of all securities of the state permanent school fund. The state board of finance is hereby made the state board of investments. *As amended, Stats. 1919, 284.*

Duties of state controller—Duty of state board.

SEC. 2. It is hereby made the duty of the state controller quarterly to notify the state board of investments of the amount of money in the state permanent school fund; and whenever there is a sufficient amount of money in said fund for investment, said board shall proceed to negotiate for the investment of the same in United States securities, in the bonds of this state, or of other states, or in bonds of any county of the State of Nevada, or in loans at a rate of interest of not less than six per cent per annum secured by mortgage on agricultural lands in this state of not less than three times the value of the amount loaned, exclusive of perishable improvements, of unexceptional title, and free from all incumbrances. Said state board of investments shall make due and diligent inquiry as to the financial standing and responsibility of the state or states, county or counties, person or persons, whose bonds or securities on agricultural lands in which it proposes to invest, and shall also require of the attorney-general his legal opinion in writing as to the validity of any act or acts of any state or county under which such bonds or securities are issued and authorized, and in which the said state board of investments contemplates investment; the attorney-general shall also be required to examine and pass upon and give his opinion in writing upon the title and the abstract of title of all agricultural land on which the state contemplates taking mortgages.

If the state board of investments be satisfied as to the financial standing and responsibility of the state or states, county or counties, whose bonds or securities it proposes to purchase, or shall be satisfied of the financial standing and responsibility of the person or persons, corporation or corporations, whose mortgages on agricultural land are offered to the state, and the attorney-general shall give his opinion in writing that the act or acts under which said bonds or securities are issued are valid, and that the issues were duly and regularly made, or shall approve the abstract of title of the agricultural land proposed to be mortgaged, the board may approve such investment, and by a majority vote of the board shall order the state controller to draw his warrant in favor of the state treasurer for the amount to be invested, and the state controller shall thereupon draw his warrant as directed, and the state treasurer shall complete the purchase of the securities authorized by the board.

To keep record.

SEC. 3. The state board of investments shall keep a permanent record of all its meetings, in which record shall be recorded the aye and nay vote of the members of the board upon all questions presented to the board, and in which shall be kept all opinions of the attorney-general as required by the provisions of this act.

Securities converted into cash, when.

SEC. 4. The state board of investments is authorized in its discretion to convert any of the bonds or securities in which any part of the state permanent school fund is now or at any time hereafter may be invested into cash by selling the same in the open market to the highest bidder or bidders, the proceeds thereof to be placed by the state treasurer in the state permanent school fund to be reinvested as provided in section 2 of this act.

Restrictions as regards counties.

SEC. 5. No part of the state permanent school fund shall be invested in the bonds of any county whose entire bonded indebtedness for all purposes shall exceed ten per cent of its assessed valuation; and the amount of bonds of any county purchased or invested in by the state board of investments shall not in the aggregate exceed four per cent of the assessed valuation of any county. The rate of interest on all such county bonds shall not be less than five per cent.

Loans on agricultural lands.

SEC. 6. Any person desiring to obtain a loan of the school funds on agricultural land shall make application in writing to the board and at the same time furnish to the board a full and complete abstract of title of the property offered as security for said loan. If the abstract be approved by the attorney-general and it shall appear that the person offering such mortgage has an exceptional title free from all incumbrances, the state board of investments shall forthwith appoint an appraiser to view the land and improvements thereon, and make a report to the board of the value thereof.

Borrower to give note—Partial payments.

SEC. 7. If the abstract be approved by the attorney-general and the title be in accordance with the requirements of the preceding section, and the written report of the appraiser or appraisers be satisfactory to the state board of investments said loan shall be made, and the person obtaining such loan shall execute a note payable to the State of Nevada for the permanent school fund for the amount thereof, and shall execute as security for the payment of such note a mortgage upon the lands to be given as security in form and manner to be approved by the attorney-general. Such mortgage shall be recorded as other mortgages of real property. Every such loan made upon a mortgage on agricultural land shall be payable in not to exceed ten years, and provision shall be made for partial payments annually or semiannually to the state treasurer, but no payments shall be made in an amount less than one hundred dollars and interest accruing. All payments of interest and payments upon principal shall be made semiannually on June 1 and December 1 of each year.

Borrower to pay expense.

SEC. 8. Any person desiring to obtain a loan upon agricultural land as provided in this act shall furnish the abstract herein provided for, and shall pay the cost of the appraiser or appraisers as may be incurred,

not to exceed five dollars per day and expenses, of such appraiser or appraisers.

SEC. 9. [Carrying appropriation; omitted.]

BUREAU OF MINES

An Act creating the Nevada state bureau of mines, and prescribing its duties.

Approved March 24, 1917, 406

Bureau created.

SECTION 1. The Nevada state bureau of mines is hereby created. Said bureau shall be governed by a board consisting of the governor, inspector of mines, the director of the Mackay school of mines of the Nevada State University, and one commissioner who shall serve without pay.

Duties of bureau.

SEC. 2. It shall be the duty of the Nevada state bureau of mines to collect information and statistics relative to and concerning mines and mining and the mineral resources of the state, and to prepare for general distribution such information concerning the mineral resources of the various mining districts of the state, and for such publication and other means of dissemination and distributing such information as may in the discretion of said board seem advisable.

Reports.

SEC. 3. Such publications required to be printed may in the discretion of said board be printed at the state printing office under the provisions of the act entitled "An act to designate and authorize the work to be done in the state printing office," approved March 5, 1909.

Assistants.

SEC. 4. The board may employ such assistants as may be necessary in carrying out the provisions of this act.

SEC. 5. [Carrying appropriation; omitted.]

BOARD OF PHARMACY

4495-4514. These sections repealed by implication by Stats. 1913, 569, the following act:

An Act to regulate the practice of pharmacy and the use and sale of poisons and drugs in the State of Nevada; providing for a state board of pharmacy, and defining its powers and duties, and fixing penalties for the violation thereof.

Approved April 1, 1913, 569

Regulating use and sale of poisons and drugs.

SECTION 1. From and after the passage of this act it shall be unlawful for any person to manufacture, compound, sell or dispense any drug, poison, medicine, or chemical, or to dispense or compound any prescription of a medical practitioner, unless such person be a registered pharmacist or a registered assistant pharmacist within the meaning of this act, except as hereinafter provided. Every store, dispensary, pharmacy, laboratory or office for the sale, dispensing or compounding of drugs, medicines or chemicals, or for the dispensing of prescriptions of medical practitioners shall be in charge of a registered pharmacist. A registered assistant pharmacist may be left in charge of a store, dispensary, pharmacy, laboratory, or office for the sale, dispensing, or compounding of drugs, medicines

or chemicals or for the dispensing of prescriptions of medical practitioners only during the temporary absence of the registered pharmacist. Temporary absence, within the meaning of this act, shall be held to be only those absences which may occur during a day's work, and when the registered pharmacist in charge shall be within immediate call, ready and able to assume the direct supervision of said pharmacy. No registered assistant shall conduct a pharmacy. Every store or shop where drugs, medicines or chemicals are dispensed or sold at retail, or displayed for sale at retail, or where prescriptions are compounded, shall be deemed a "pharmacy" within the meaning of this act. Nothing herein shall be construed to prohibit the leaving in charge of a store, dispensary, pharmacy, laboratory or office, for the sale, dispensing or compounding of drugs, medicines or chemicals or for the dispensing of prescriptions, any person other than those herein mentioned; *provided, however*, that such person so left in charge shall not engage in the compounding of drugs, medicines, or chemicals or the preparation of prescriptions of medical practitioners.

Licentiate in pharmacy.

SEC. 2. Any person in order to be a registered pharmacist must be a licentiate in pharmacy, or a practicing pharmacist.

Qualifications of licentiate.

SEC. 3. Licentiates in pharmacy must be such persons as possess the fundamentals of a high-school education and who have had at least five (5) consecutive years' actual experience in drug stores where the prescriptions of medical practitioners have been compounded, and who have passed a satisfactory examination before the state board of pharmacy; *provided, however*, that the board of pharmacy may in its discretion grant certificates of registration, without further examination, to graduates of such colleges and schools of pharmacy as shall be approved by the board of pharmacy. Said board of pharmacy may also grant certificates of registration to the licentiates of other states or territories as it may deem proper. Practicing pharmacists are persons who, at the passage of this act, are registered as such.

Qualifications of registered assistant.

SEC. 4. Assistant registered pharmacists shall be such persons as possess the fundamentals of a high-school education and who shall have had two (2) years' actual experience in drug stores where the prescriptions of medical practitioners have been compounded during such time, and as shall pass a satisfactory examination before the board of pharmacy. The fact of such qualifications and experience shall be shown to the satisfaction of the board.

Board, how constituted—Terms—Officers—Bonds.

SEC. 5. The governor shall appoint five competent registered pharmacists, residing in different parts of the state, to serve as a board of pharmacy. The members of the board shall, within thirty (30) days after their appointment, individually take and subscribe before the county clerk, in the county in which they individually reside, an oath faithfully and impartially to discharge the duties prescribed by the act. They shall hold office for the term of four (4) years, and until their successors are appointed and have qualified. In case of vacancy in the board of pharmacy the governor shall fill the same by appointing a member to serve for the remainder of the term only. The board shall organize by electing a president, secretary, and a treasurer. The secretary may or may not be a member of the board, as the board in its sound discretion shall determine. The secretary and

treasurer shall each give a satisfactory bond running to the State of Nevada in the sum of not less than two thousand dollars, and such greater sum as the board may from time to time require for the faithful discharge of their respective duties.

Secretary to keep records—Salary.

SEC. 6. The secretary of the board shall keep a complete record of all proceedings of the board and of all certificates issued and shall perform such other duties as the board may from time to time require, for which services he shall receive the sum of twenty-five (\$25) dollars per month. Each member of the board and the secretary shall receive his necessary hotel and traveling expenses in attending formal meetings of the board, the same to be audited and allowed as other claims against the state out of the moneys appropriated by law.

Quorum—Meetings—Powers and duties of board.

SEC. 7. Three members of the board shall constitute a quorum. They shall hold a meeting at least once in every six months.

POWERS AND DUTIES OF THE BOARD

Subdivision 1. The state board of pharmacy shall have power:

(a) To make such by-laws and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performance of its duties;

(b) To regulate the practice of pharmacy;

(c) To regulate the sale of poisons;

(d) To examine and register as pharmacists and assistant pharmacists all applications whom it shall deem qualified to be such;

(e) The board shall report annually to the governor upon the condition of pharmacy in the state, which said report shall contain a full and complete record of the proceedings of the board for the year, a complete statement of all fees received, and also the names of all pharmacists registered under this act. It shall be the duty of the state printer to print said report.

Applicants for certificates—Fee.

SEC. 8. All applicants for certificates as registered pharmacists, whether by examination, or diploma of graduation from college or school of pharmacy or on the license or certificate issued by other state or territorial board of pharmacy, shall, before a certificate be granted, pay to the secretary of the board the sum of ten (\$10) dollars. If an applicant for certificate of registration as a registered pharmacist by examination fail to pass such an examination, he shall not be eligible to reexamination within six months from the date of such previous examination. After the said six months shall have expired the applicant shall be entitled to reexamination upon the payment of a fee of five (\$5) dollars. Upon failing to pass the second examination the applicant may be reexamined upon the payment of a fee of three (\$3) dollars at any regular meeting of the board of pharmacy; *provided, however*, that no temporary certificate shall be issued to an applicant who has failed to pass the second examination.

Applicants for certificates—Fee.

SEC. 9. Applicants for registration as registered assistant pharmacists shall pay to the secretary of the board of pharmacy a fee of five (\$5) dollars before they shall be entitled to take the examination. The certificate of registered assistant pharmacist does not entitle its holder to engage in the practice of pharmacy on his own account, nor to conduct or

operate any pharmacy or drug store except under the supervision of a registered pharmacist.

Annual fee for renewal.

SEC. 10. Every registered pharmacist and every assistant registered pharmacist who desires to keep his certificate in force shall annually thereafter beginning on the first Monday of May, 1913, pay to the secretary of the board of pharmacy, a registry fee, to be fixed by the board, but which in no case shall exceed two (\$2) dollars per annum, for which he shall receive a renewal of said certificate. All persons in possession of certificates, issued by the state board of pharmacy, and which are in force at the time of the adoption of this act, shall, beginning on the first Monday in May, 1913, and annually thereafter, pay to the secretary of the board of pharmacy a like sum for which they shall receive a renewal of said certificate. All certificates issued during the year expire on the first Monday of May next following.

Certificate must be posted.

SEC. 11. Every certificate of registration granted under this act and the current renewal thereof shall be conspicuously exposed in the pharmacy or drug store in which the owner thereof is employed or is conducting.

Failure to renew—Additional fee.

SEC. 12. Any registered pharmacist or any assistant registered pharmacist who shall fail to procure a renewal of his certificate at the time above stated shall not receive a renewal thereof except upon the payment of the renewal fee for each year or fraction thereof that may have elapsed between the expiration of said certificate and the application for renewal thereof, and in addition thereto a penalty of one dollar for each year or fraction thereof so elapsing between the date of expiration of such certificate and application for a renewal, before new certificate shall be issued; *provided, however*, that no certificate shall be renewed after a lapse of registration for a period of five (5) years, excepting upon passing a satisfactory examination before the board of pharmacy.

Certificate recorded—Record evidence.

SEC. 13. Every registered pharmacist and every assistant registered pharmacist upon receiving a certificate of registration under this act shall, before he engage in business as a pharmacist or assistant registered pharmacist, in any county of this state in which he or she shall locate, or into which he or she shall afterward remove, have such certificate recorded in the office of the county clerk of such county, and it is hereby made the duty of the county clerk to record such certificate in a book to be provided and kept for that purpose, and the county clerk is hereby authorized to charge a fee of one dollar for the recording of such certificate for record. Each person holding a certificate entitling him to practice pharmacy in this state and being engaged in business as a pharmacist at the time of the passage and adoption of this act, shall have such certificate recorded, as in this section provided, within thirty days after the taking effect of this act. The record of the certificate required by this section, or a certified copy of the same, shall be evidence in all courts that the person holding it was registered as evidenced by said certificate on the date of same. Upon the certificate being recorded as herein provided, it shall be the duty of the county clerk so recording to notify the secretary of the board of pharmacy of the name of the party and the date of such record.

Secretary to be notified of change.

SEC. 14. From and after the passage and adoption of this act, every

registered pharmacist and every assistant registered pharmacist, shall within thirty days after changing his place of business as designated on the books of the secretary of the board of pharmacy, notify the secretary of the board of pharmacy of such change and of his new place of business, and upon receipt of such notification the secretary shall make the necessary change in his register.

Failure to notify, misdemeanor.

SEC. 15. Any registered pharmacist or any assistant registered pharmacist failing to comply with any of the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars.

Lost certificate, how replaced—Fee—License revoked, how.

SEC. 16. In the event any person having registered shall have lost his or her certificate, or the same has been destroyed, or if he or she desires the renewal of the same, a new certificate may be issued by said board upon the applicant paying therefor the sum of three dollars; *provided, however*, that where the original certificate is not lost or destroyed, then the certificate shall be surrendered before a renewal of same shall be issued; *and provided further*, that the board shall have power to require satisfactory evidence from the applicant of the loss or destruction of the certificate; *and provided further*, that where the applicant is delinquent for the annual dues required by this act then he or she shall be required to pay to said board sufficient fees to cover his delinquency in that behalf before he or she shall be entitled to a reissue of the certificate in this subdivision provided for. The board shall have power to provide by proper rules and regulations for the revocation by said board of licenses issued under the provisions of this act, whenever the holder of such license shall be guilty of habitual intemperance or addicted to the use of narcotic drugs, or shall have been convicted of a felony.

Proprietor must employ registered pharmacist.

SEC. 17. Any proprietor of a pharmacy who shall fail or neglect to place in charge of such pharmacy a registered pharmacist, or any proprietor who shall, by himself or any other person, permit the compounding of prescriptions, or the vending of drugs, medicines, or poisons, in his or her store, or place of business, except by or in the presence and under the direct, immediate and personal supervision of a registered pharmacist, or any person, not being a registered pharmacist, who shall take charge of or act as manager of any pharmacy, or store, or who, not being a registered pharmacist, retails, compounds or dispenses drugs, medicines, or poisons shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than twenty (\$20) dollars and not more than one hundred dollars, or by imprisonment for a term of not exceeding fifty days, or by both such fine and imprisonment.

Permit to rural dealers—Fee.

SEC. 18. The board of pharmacy shall issue a permit to general dealers in rural districts in which the conditions, in their judgment, do not justify the employment of a registered pharmacist, and where the store of such general dealer is not less than three miles distant from the store of a registered pharmacist; which said permit shall authorize the persons or firm named therein to sell in such locality, but not elsewhere, and under such restrictions and regulations as said board may from time to time adopt, the following simple household remedies and drugs, and no other, in such manner and form as may be hereafter authorized by said board, as follows, to wit:

Tincture of arnica, spirits of camphor, almond oil, distilled extract, witch-hazel, paregoric, syrup of ipecac, syrup of rhubarb, hive syrup, sweet spirits of nitre, tincture of iron, epsom salts, rochelle salts, senna leaves, carbonate of magnesia, seidlitz powders, quinine, cathartic pills, chamomile flowers, caraway seeds, chlorate of potash, moth balls, plasters, salves, peroxide of hydrogen, copperas, gum camphor, blue ointment, asafetida, saffron, anise seed, saltpeter.

The board shall charge an annual fee of eight dollars in advance for such permit, and it shall be unlawful for any dealer to sell any drugs or ordinary household remedies without complying with the requirements of this section. Whenever a registered pharmacist shall establish a pharmacy within three miles by the shortest road from the place of business of such general dealer, no further license shall be granted, and the license already issued shall be void; *provided*, that the following drugs, medicines and chemicals may be sold by grocers and dealers generally without restriction, viz:

Glauber salts, vaseline, turpentine, condition powders, cream of tartar, carbonate of soda, bay rum, essence of Jamaica ginger, essence of peppermint, ammonia, alum, castor oil, bicarbonate of soda, chloride of lime, glycerine, witch-hazel, sheep dip, borax, sulphur, bluestone, flax seed, insect powder, fly paper, any rat poison, squirrel poison, and gopher poison, and arsenical poison used for orchard spraying, when prepared and sold in original and unbroken packages and labeled with the official poison labels.

Board to furnish certain lists.

SEC. 19. It shall be the duty of the board of pharmacy by resolution, at least annually, to request of the chief of police, marshal or constable of every city, town or township in this state, to furnish a list of all drug stores, together with the names of the owners, managers, and all employees in said store, and a brief statement of the capacity in which said persons are employed in said store, and also the firm name of all stores retailing drugs, medicines or poisons. Upon such request in writing it shall be the duty of the chief of police, marshal or constable of said city, town or township to require the patrolmen or deputies under their command, upon their respective beats, to obtain such lists as are in this section specified, and deliver the same to the board of pharmacy. It shall be the duty of the owner of any drug store or other store retailing drugs, medicines or poisons, when called upon by an officer, as above set forth, or by a member of the board of pharmacy, or a duly authorized inspector, to furnish said officer, member of the board of pharmacy, or duly authorized inspector with the information required. Any person refusing to furnish the information, or wilfully furnishing information that is false or untrue, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars nor more than fifty dollars, or by imprisonment for not less than ten days and not more than thirty-five days, or by both such fine and imprisonment.

Food and drugs control officials to cooperate.

SEC. 20. The officials in charge of the food and drug act of this state are hereby designated and constituted agents for the enforcement of this act, and shall cooperate with the state board of pharmacy, herein provided for, in carrying out the provisions of this act, and for this purpose, they shall have free access at all times during business hours to all places where drugs, medicines or poisons are offered for sale.

Penalties collected by civil or criminal process.

SEC. 21. The several penalties prescribed in this act may be recovered

in any court having jurisdiction, by a civil action instituted by the board of pharmacy, in the name of the State of Nevada, or by criminal prosecution upon complaint being made; and it shall be the duty of the district attorney of the county wherein violations of the provisions of this act occur to conduct all such actions and prosecutions at the request of the board.

Fees go to state treasury.

SEC. 22. All fees collected under the provisions of this act shall be paid into the state treasury at the end of every fiscal year.

Druggists exempt from jury duty.

SEC. 23. All persons registered under this act shall be exempt and free from jury duty.

PUBLIC SERVICE COMMISSION

4515-4548. Under this act relator was employed as an expert engineer at \$3,600 per annum and traveling expenses. But after the enactment of Stats. 1913, 404, the state controller refused to draw his warrant in relator's favor at the rate of \$3,600 a year, but only at the rate of \$2,500 a year. Relator sought mandamus, contending that the act of 1913, as an act amending the public service act, violated Const. art. 4, sec. 17. Held, that the act of 1913 was valid, it not purporting to be an amendatory act, but clearly an independent act complete in itself, which was not embraced in the constitutional requirement, and might alter the prior statute without referring to it. *State ex rel. Freudenberger v. Cole*, 38 Nev. 488-491 (151 P. 944).

4515-58. Repealed, Stats. 1919, 216, and the following act (Stats. 1919, 198) substituted:

4530. See *State ex rel. Freudenberger v. Cole*, 38 Nev. 488, under sections 4515-4548.

An Act defining public utilities, providing for the regulation thereof, creating a public service commission, defining its duties and powers, and other matters relating thereto.

Approved March 28, 1919, 198

Commission created.

SECTION 1. The public service commission is hereby created whose duty it shall be to supervise and regulate the operation and maintenance of public utilities, as hereinafter named and defined, in conformity with the provisions of this act.

Composition of commission—Qualifications.

SEC. 2. The public service commission shall consist of three commissioners, one of whom shall be the state engineer who shall be ex officio commissioner of said commission; the other two commissioners shall be appointed by the public service board which is hereby created, to consist of the governor, lieutenant-governor and attorney-general; the terms of the appointive commissioners shall commence on the first Monday in April, 1919; the term of one appointee shall expire on the first Monday in April, 1922, and the term of the second appointee shall expire on the first Monday in April, 1923. Upon the expiration of the terms of said appointive commissioners, their respective successors shall be appointed to hold office for a term of four years after the date of the appointment and until their respective successors are appointed. One of said commissioners shall be generally familiar with the operation of railroads; the third commissioner shall have a general knowledge of fares and freights and tolls and charges levied and collected by public utilities as defined in this act. The commissioners appointed under this act shall, within twenty (20) days after their appointment and qualification, meet at the state capitol and organize

and elect one of their number chairman, who shall serve until the second Monday in April, 1921. On the second Monday in April of each odd-numbered year thereafter, the commissioners shall meet at the office of the commission and elect a chairman, who shall serve for two years and until his successor is elected.

The majority of said commissioners shall have full power to act in all matters within their jurisdiction. In the event that two commissioners are disqualified or in the event of two vacancies within the commission, the remaining commissioner shall exercise all the power of the commission. Not more than a majority of all the commissioners shall be members of the same political party.

Removal of commissioners.

SEC. 3. The public service board shall have the power to remove any commissioner for inefficiency, neglect of duty, or malfeasance in office. Such removal shall be upon public hearing after ten days notice and the service upon the commissioner of a copy of the charges. The record of any such proceedings shall be filed with the secretary of state if such a commissioner be removed.

No commissioner shall be pecuniarily interested in any public utility in this state or elsewhere.

One member to give entire time—Oath.

SEC. 4. One of the appointive members of the commission shall give his entire time to the business of the commission and shall not pursue any other business or vocation or hold any other office of profit, and no commissioner shall be a member of any political convention or a member of any committee of any political party.

Before the entering upon the duties of his office, each commissioner shall subscribe to the constitutional oath of office, and shall in addition swear that he is not pecuniarily interested in any public utility in this state as defined herein; said oath of office shall be filed in the office of the secretary of state.

Salaries.

SEC. 5. The appointive commissioner who shall devote his entire time to the business of the commission shall receive a salary of four thousand (\$4,000) dollars per annum; the other appointive commissioner shall receive a salary of twenty-five hundred (\$2,500) dollars per annum, and the ex officio member of the commission shall receive a salary of one thousand (\$1,000) dollars per annum; all of said salaries shall be paid as other state officers are paid. Said commission shall appoint a secretary who shall be an expert rate man and who shall receive a salary of three thousand (\$3,000) dollars per annum; the commission may employ such other clerks, experts or engineers as may be necessary, and shall fix their compensation; *provided*, that such appointments and employments and the compensation therefor shall first be approved by the state board of examiners.

Name—Seal—Office—Rules.

SEC. 6. The commission shall be known as "Public Service Commission of Nevada," and in that name may sue and be sued.

Said commission shall have a seal upon which shall be the words "Public Service Commission of Nevada," by which it shall authenticate its proceedings and orders, and all papers made under such seal shall be admitted in evidence without further authenticity or proof.

The commission shall keep its office at Carson City, Nevada, in rooms provided by the state board of capitol commissioners. The commission

may hold sessions or hearings at its office or at such other place or places as the convenience of the commission, or of the parties, require.

The commission shall have the power to adopt and publish rules for the orderly conduct of proceedings before it.

"Public utility" defined.

SEC. 7. The term "Public Utility," as used herein, shall mean and embrace all corporations, companies, individuals, associations of individuals, their lessees, trustees or receivers (appointed by any court whatsoever) that now, or may hereafter, own, operate, manage, or control any railroad or part of a railroad as a common carrier in this state, or cars or other equipment used thereon, or bridges, terminals, or sidetracks, or any docks or wharves or storage elevators used in connection therewith, whether owned by such railroads or otherwise; also any company or individual or association of individuals owning or operating automobiles, auto trucks, or other self-propelled vehicles, engaged in transporting persons or property for hire over and along the highways of this state as common carriers; also express companies, telegraph and telephone companies, and all companies which may own cars of any kind or character, used and operated as a part of railroad trains, in or through this state, and all duties required of and penalties imposed upon any railroad or any officer or agent thereof shall, in so far as the same are applicable, be required of and imposed upon the owner or operator of said automobiles, auto trucks, or other self-propelled vehicles, transporting persons or property for hire over and along the highways of this state as common carriers, express companies, telegraph and telephone companies, and companies which may own cars of any kind or character, used and operated as a part of railroad trains in or through this state, and their officers and agents, and the commission shall have the power of supervision and control of all such companies and individuals to the same extent as of railroads; *provided, however*, that automobiles used exclusively as hearses or ambulances operated within the limits of cities and towns, and other automobiles which have no specified routes of travel and which are not operated as common carriers, shall not be construed as being under the jurisdiction of the commission within the meaning hereof. "Public Utility" shall also embrace every corporation, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate or control any plant or equipment, or any part of a plant or equipment within the state for the production, delivery or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, light, power in any form or by any agency, water for business, manufacturing, agricultural or household use, or sewerage service whether within the limits of municipalities, towns, or villages, or elsewhere; and the public service commission is hereby invested with full power of supervision, regulation and control of all such utilities, subject to the provisions of this act and to the exclusion of the jurisdiction, regulation and control of such utilities by any municipality, town or village, unless otherwise provided by law.

(a) The provisions of this act and the term "Public Utility" shall apply to the transportation of passengers and property and the transmission of messages between points within the state, and to the receiving, switching, delivering, storing and hauling of such property, and receiving and delivering messages, and to all charges connected therewith, including icing charges and mileage charges, and shall apply to all railroads, corporations, automobiles, auto trucks, or other self-propelled vehicles, express companies, car companies, freight and freight-line companies, and to all associations of persons, whether incorporated or otherwise, that shall do any

business as common carriers upon or over any line of railroad or any public highway within this state, and to any common carrier engaged in the transportation of passengers and property, wholly by rail, or partly by rail and partly by water:

Commission may investigate values.

SEC. 8. The commission may, in its discretion, investigate and ascertain the value of all property of every public utility as defined in this act, actually used and useful for the convenience of the public. In making such investigation the commission may avail themselves of all information contained in the assessment rolls of the various counties and the public records and files of all state departments, offices and commissions and any other information obtainable.

Charges for public service regulated.

SEC. 9. Every public utility, as herein defined, is hereby required to furnish reasonably adequate service and facilities, and the charges made for any service rendered or to be rendered, or for any service in connection therewith, or incidental thereto, shall be just and reasonable, and every unjust and unreasonable charge for service of public utilities is prohibited and declared to be unlawful.

Public utilities to report.

SEC. 10. Every public utility, as defined in this act, shall keep and render to the commission, in the manner, form and detail prescribed by the commission, uniform and detailed accounts of all business transacted and shall furnish such commission with an annual report in such form and detail as shall be prescribed by the commission; the accounts of every public utility as herein defined shall be closed annually on the first day of January and the reports herein required shall be filed not later than March 15, following; the commission may at any time call for desired information omitted from such reports or not provided for therein, when in the judgment of the commission such information is necessary.

Any commissioner or any person or persons authorized by the commission shall have the right to examine the books, accounts, records, minutes, and papers of any public utility for the purpose of determining their correctness and whether they are being kept in accordance with the rules and regulations and form prescribed by the commission; *provided*, where any such public utility is required by the United States government to keep accounts in a specified manner, such system shall be followed, also the fiscal years as fixed by the government.

Penalty for refusal to permit examination.

SEC. 11. Any agent or person in charge of the books, accounts, records, minutes or papers of any public utility who shall refuse or fail for a period of thirty days to furnish the commission with any report required by it or who shall fail or refuse to permit any commissioner or other person authorized by the commission to inspect such books, accounts, records, minutes, or papers on behalf of the commission shall be liable to a penalty in a sum of not less than three hundred (\$300) dollars nor more than five hundred (\$500) dollars, such penalty to be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction; and each day's refusal or failure shall be deemed a separate offense, and be subject to the penalty herein prescribed.

Biennial report.

SEC. 12. The commission shall make and publish biennial reports showing its proceedings. All such reports and all records, proceedings, papers

and files of said commission shall be open at all reasonable times to the public; *provided, however*, that the commission, when it is necessary to the public interest, may withhold any facts or information in its possession for a period not to exceed ninety days.

To prescribe standards.

SEC. 13. The commission may, when necessary, ascertain and prescribe for each kind of public utility adequate, convenient and serviceable standards for the measurement of quality, pressure, voltage or other conditions pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for the examination and testing of such products or service and for the measurement thereof. Any consumer, user or party served may have the quality or quantity of the product or the character of any service rendered by any public utility tested upon the payment of fees fixed by the commission, which fees, however, shall be paid by the public utility and repaid to the complaining party if the quality or quantity of the product or the character of the service be found by the commission defective or insufficient in a degree to justify the demand for testing; or the commission may apportion the fees between the parties as justice may require; *provided*, that in cities of more than ten thousand population nothing contained in this act shall direct or permit the installation or the use of mechanical water meters or similar mechanical devices to measure the quantity of water served or delivered to water users.

The commission may, in its discretion, purchase such materials, apparatus, and standard measuring instruments for such examination and tests as it may deem necessary. The commission shall have the right and power to enter upon any premises occupied by any public utility for the purpose of making the examination and tests provided for in this act and set up and use on such premises any necessary apparatus and appliances and occupy reasonable space therefor. Any public utility refusing to allow such examination to be made as herein provided shall be subject to the penalties prescribed in section 11 of this act.

The public service commission of Nevada is authorized and directed to prescribe the standards for the maintenance, use and operation of electric poles, wires, cables and appliances of all public utilities within the state engaged in the business of furnishing electric power, light and energy.

Schedule of rates and charges to be filed.

SEC. 14. Every public utility shall file with the commission within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed or product furnished in connection therewith by any public utility controlled and operated by it. In connection with such schedule, and as a part of it, shall also be filed all rules and regulations that in any manner affect the rates charged or to be charged for any service or product. A copy, or so much of said schedule as the commission shall deem necessary for the use of the public, shall be printed in plain type and posted in every station or office of such public utility where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and conveniently inspected. When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall, in like manner, be printed and filed with the commission, and so much thereof as the commission may deem necessary for the use of the public shall be posted conspicuously in every station or office as in this section above provided. No changes shall thereafter be made in any

schedule, including schedules of joint rates or in the rules and regulations affecting any and all rates or charges except upon thirty days' notice to the commission and all such changes shall be plainly indicated, or by filing new schedules in lieu thereof thirty days prior to the time the same are to take effect; *provided*, that the commission, upon application of any public utility, may prescribe a less time within which a reduction may be made. Copies of all new or amended schedules shall be filed, and posted in the stations and offices of public utilities as in the case of original schedules; *provided*, whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the interested utility or utilities, but upon reasonable notice, to enter upon hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon, the commission, upon delivering to the utility or utilities affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than thirty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the date upon which the rate, fare, charge, classification, regulation, or practice is to go into effect, the commission may make such order in reference to such rate, fare, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation or practice has become effective; *provided*, that if any such hearing cannot be concluded within the period of suspension as above stated, the commission may, in its discretion, extend the time of suspension a further period of not to exceed thirty days. In all cases where such order of suspension shall have been made, the commission shall give to the hearing and decision of the question involved preference over all other questions pending before it, and decide the same as speedily as possible.

Printed schedules to govern.

SEC. 15. It shall be unlawful for any public utility to charge, demand, collect or receive a greater or less compensation for any service performed by it within the state or for any service in connection therewith than is specified in such printed schedules, including schedule of joint rates, as may at the time be in force, or to demand, collect or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed as provided in this act. It shall likewise be unlawful for any public utility to grant any rebate, concession, or special privilege to any consumer or user, which directly or indirectly shall or may have the effect of changing the rates, tolls, charges, or payments, and any violation of the provisions of this section shall subject the violator to the penalty prescribed in section 11 of this act. This, however, shall not have the effect of suspending, rescinding, invalidating, or in any way affecting contracts existing on March 23, 1911.

Special contract rates legal, when.

SEC. 16. Nothing in this act shall be construed to prevent concentration, commodity, transit and other special contract rates, but all such rates shall be open to all shippers of a like kind of traffic under similar circumstances and conditions, and shall be subject to the provisions of this act as to the

treasurer shall each give a satisfactory bond running to the State of Nevada in the sum of not less than two thousand dollars, and such greater sum as the board may from time to time require for the faithful discharge of their respective duties.

Secretary to keep records—Salary.

SEC. 6. The secretary of the board shall keep a complete record of all proceedings of the board and of all certificates issued and shall perform such other duties as the board may from time to time require, for which services he shall receive the sum of twenty-five (\$25) dollars per month. Each member of the board and the secretary shall receive his necessary hotel and traveling expenses in attending formal meetings of the board, the same to be audited and allowed as other claims against the state out of the moneys appropriated by law.

Quorum—Meetings—Powers and duties of board.

SEC. 7. Three members of the board shall constitute a quorum. They shall hold a meeting at least once in every six months.

POWERS AND DUTIES OF THE BOARD

Subdivision 1. The state board of pharmacy shall have power:

(a) To make such by-laws and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performance of its duties;

(b) To regulate the practice of pharmacy;

(c) To regulate the sale of poisons;

(d) To examine and register as pharmacists and assistant pharmacists all applications whom it shall deem qualified to be such;

(e) The board shall report annually to the governor upon the condition of pharmacy in the state, which said report shall contain a full and complete record of the proceedings of the board for the year, a complete statement of all fees received, and also the names of all pharmacists registered under this act. It shall be the duty of the state printer to print said report.

Applicants for certificates—Fee.

SEC. 8. All applicants for certificates as registered pharmacists, whether by examination, or diploma of graduation from college or school of pharmacy or on the license or certificate issued by other state or territorial board of pharmacy, shall, before a certificate be granted, pay to the secretary of the board the sum of ten (\$10) dollars. If an applicant for certificate of registration as a registered pharmacist by examination fail to pass such an examination, he shall not be eligible to reexamination within six months from the date of such previous examination. After the said six months shall have expired the applicant shall be entitled to reexamination upon the payment of a fee of five (\$5) dollars. Upon failing to pass the second examination the applicant may be reexamined upon the payment of a fee of three (\$3) dollars at any regular meeting of the board of pharmacy; *provided, however*, that no temporary certificate shall be issued to an applicant who has failed to pass the second examination.

Applicants for certificates—Fee.

SEC. 9. Applicants for registration as registered assistant pharmacists shall pay to the secretary of the board of pharmacy a fee of five (\$5) dollars before they shall be entitled to take the examination. The certificate of registered assistant pharmacist does not entitle its holder to engage in the practice of pharmacy on his own account, nor to conduct or

operate any pharmacy or drug store except under the supervision of a registered pharmacist.

Annual fee for renewal.

SEC. 10. Every registered pharmacist and every assistant registered pharmacist who desires to keep his certificate in force shall annually thereafter beginning on the first Monday of May, 1913, pay to the secretary of the board of pharmacy, a registry fee, to be fixed by the board, but which in no case shall exceed two (\$2) dollars per annum, for which he shall receive a renewal of said certificate. All persons in possession of certificates, issued by the state board of pharmacy, and which are in force at the time of the adoption of this act, shall, beginning on the first Monday in May, 1913, and annually thereafter, pay to the secretary of the board of pharmacy a like sum for which they shall receive a renewal of said certificate. All certificates issued during the year expire on the first Monday of May next following.

Certificate must be posted.

SEC. 11. Every certificate of registration granted under this act and the current renewal thereof shall be conspicuously exposed in the pharmacy or drug store in which the owner thereof is employed or is conducting.

Failure to renew—Additional fee.

SEC. 12. Any registered pharmacist or any assistant registered pharmacist who shall fail to procure a renewal of his certificate at the time above stated shall not receive a renewal thereof except upon the payment of the renewal fee for each year or fraction thereof that may have elapsed between the expiration of said certificate and the application for renewal thereof, and in addition thereto a penalty of one dollar for each year or fraction thereof so elapsing between the date of expiration of such certificate and application for a renewal, before new certificate shall be issued; *provided, however*, that no certificate shall be renewed after a lapse of registration for a period of five (5) years, excepting upon passing a satisfactory examination before the board of pharmacy.

Certificate recorded—Record evidence.

SEC. 13. Every registered pharmacist and every assistant registered pharmacist upon receiving a certificate of registration under this act shall, before he engage in business as a pharmacist or assistant registered pharmacist, in any county of this state in which he or she shall locate, or into which he or she shall afterward remove, have such certificate recorded in the office of the county clerk of such county, and it is hereby made the duty of the county clerk to record such certificate in a book to be provided and kept for that purpose, and the county clerk is hereby authorized to charge a fee of one dollar for the recording of such certificate for record. Each person holding a certificate entitling him to practice pharmacy in this state and being engaged in business as a pharmacist at the time of the passage and adoption of this act, shall have such certificate recorded, as in this section provided, within thirty days after the taking effect of this act. The record of the certificate required by this section, or a certified copy of the same, shall be evidence in all courts that the person holding it was registered as evidenced by said certificate on the date of same. Upon the certificate being recorded as herein provided, it shall be the duty of the county clerk so recording to notify the secretary of the board of pharmacy of the name of the party and the date of such record.

Secretary to be notified of change.

SEC. 14. From and after the passage and adoption of this act, every

apply therefor, for the transportation of any and all kinds of freight in carload lots. In case of insufficiency of cars at any time to meet all requirements, such cars as are available shall be distributed among the several applicants therefor in proportion to their respective immediate requirements without discrimination between shippers or competitive or noncompetitive places; *provided*, preference may be given to shipments of live stock and perishable property.

(a) The commission shall have the power to enforce reasonable regulations for furnishing cars to shippers, and switching the same, and for the loading and unloading thereof, and the weighing of the cars and freight offered for shipment over any line of railroad.

May subpoena and swear witnesses.

SEC. 24. Any commissioner, or the secretary thereof, may administer oaths to any witness called to testify in any hearing or proceeding before the commission. The commission may require, by order to be served on any public utility in the same manner as a subpoena in a civil action, the production at such time and place as the commission may designate of any books, accounts, papers, or records kept by such public utility in any office or place without the State of Nevada, or verified copies in lieu thereof, if the commission shall so direct, in order that an examination may be made by the commission or under its direction, or for use as testimony. If any public utility shall refuse or fail to comply with such order, the said utility shall be subject to the penalty named in section 11.

Hearings of complaints.

SEC. 25. Upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society or club, or by any body politic or municipal organization or by any person or persons, firm or firms, corporation or corporations, or association or associations the same being interested, that any of the rates, tolls, charges, or schedules, or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurements, practice, or act whatsoever affecting or relating to the transportation of persons or property, or any service in connection therewith, or the production, transmission or delivery or furnishing of heat, light, water, or power, or any service in connection therewith is, in any respect, unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting said rates, tolls, charges, schedules, regulations, measurements, practice, or act complained of shall be entered without a formal hearing.

(a) The commission shall, prior to such formal hearing, notify the public utility complained of that complaint has been made, stating the substance thereof, or, if deemed necessary, accompanying the notice with a copy of the complaint, and ten days after such notice has been given, the commission may set a time for hearing.

(b) The commission shall give the public utility and the complainant or complainants at least ten days' notice of the time when and place where such hearing will be held, at which hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil actions in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against

the state are paid; but no fees or mileage shall be allowed unless the chairman of the commission shall certify to the correctness of the claim.

Witnesses in contempt, when.

SEC. 26. If any party ordered to appear before the commission as a witness shall fail to obey such order, the commission, or any member, or the secretary thereof, may apply to the clerk of the nearest district court for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena, and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed a contempt of court and punished accordingly.

Commission may change rates, how.

SEC. 27. If, upon any hearing and after due investigation, the rates, tolls, charges, schedules or joint rates shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential, or otherwise in violation of any of the provisions of this act, the commission shall have the power to fix and order substituted therefor such rate or rates, tolls, charges, or schedules, as shall be just and reasonable. If it shall in like manner be found that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this act, or if it be found that the service is inadequate, or that any reasonable service cannot be obtained, the commission shall have the power to substitute therefor such other regulations, measurements, practices, service, or acts, and make such order relating thereto as may be just and reasonable.

(b) When complaint is made of more than one rate, charge or practice, the commission may, in its discretion, order separate hearings upon the several matters complained of and at such times and places as it may prescribe. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules regulations, practices, and service, and, after a full hearing as above provided, by order, make such changes as may be just and reasonable, the same as if a formal complaint had been made.

Depositions of witnesses.

SEC. 28. The commission, or any party to any proceeding before it, may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

Record to be kept.

SEC. 29. A full and complete record shall be kept of all proceedings before the commission or its representative on any formal investigation, and all testimony shall be taken down by the stenographer appointed by the commission. Whenever any complaint is served upon the commission as hereinafter provided for the bringing of actions against the commission, before the action is reached for trial, the commission shall cause a certified copy of all proceedings held and testimony taken upon such investigation to be filed with the clerk of the court in which the action is pending. A copy of such proceedings and testimony shall be furnished to any party, on payment of a reasonable amount therefor, to be fixed by the commission, which amount shall be uniform per folio to all parties. The amount so charged and collected shall be turned over by the commission to the state treasurer, and by him carried into the fund appropriated for the general expenses of the commission.

Punishment for perjury.

SEC. 30. No person shall be excused from testifying, or from producing

books and papers in any proceeding based upon or growing out of any alleged violation of the provisions of this act, on the ground of or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for, or on account, of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; *provided*, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

Punishment for failure or neglect to make reports.

SEC. 31. Any officer, agent, or employee of any public utility who shall wilfully fail or refuse to fill out and return any blanks as required by this act, or shall wilfully fail or refuse to answer any questions therein propounded, or shall knowingly or wilfully give a false answer to any such questions, or shall evade the answer to any such question where the fact inquired of is within his knowledge, or who shall, upon proper demand, wilfully fail or refuse to exhibit to any commission or any commissioners, or any person also authorized to examine the same, any book, paper or account of such public utility which is in his possession or under his control, shall be subject to the penalty prescribed in section 11 of this act.

Rates in force, when.

SEC. 32. All rates, fares, charges, classifications, and joint rates fixed by the commission shall be in force, and shall be *prima facie* lawful from the date of the order until changed or modified by the commission, or in pursuance of section 33 of this act. All regulations, practices, and service prescribed by the commission shall be enforced and shall be *prima facie* reasonable unless suspended or found otherwise in an action brought for the purpose, pursuant to the provisions of section 33 of this act, or until changed or modified by the commission itself upon satisfactory showing made.

Action in district court.

SEC. 33. Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or services, may within ninety (90) days commence an action in the district court of the proper county against the commission and other interested parties as defendants to vacate and set aside any such order on the ground that the rate fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order is unreasonable. The commission and other parties defendant shall file their answers to said complaint within thirty (30) days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty (20) days' notice to either party.

All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to said commission.

(a) No injunction shall issue suspending or staying any order of the commission except upon application to the court or judge thereof, notice to the commission having been first given and hearing having been had thereon; *provided*, that all rates fixed by the commission shall be deemed

reasonable and just, and shall remain in full force and effect until final determination by the courts having jurisdiction.

(b) If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen (15) days from the date of such transmission. Upon receipt of such evidence the commission shall consider the same, and may alter, modify, amend, or rescind its orders relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice, or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

(c) If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

(d) Either party to said action, within sixty (60) days after the service of a copy of the order or judgment of the court, may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Nevada, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

(e) In all actions under this section the burden of proof shall be upon the party attacking or resisting the order of the commission to show by clear and satisfactory evidence that the order is unlawful, or unreasonable, as the case may be.

Fatal accidents must be reported.

SEC. 34. Every public utility shall, whenever an accident occurs in the conduct of its operation causing death, give prompt notice thereof to the commission. If in its judgment the public interest requires it, the commission shall cause an investigation to be made forthwith, at such place and in such manner as the commission shall deem it best.

Penalties for culpable public utilities.

SEC. 35. If any public utility shall violate any provision of this act or shall do any act prohibited, or shall fail or refuse to perform any duty enjoined upon it, or upon failure of any public utility to place in operation any rate or joint rate, or do any act herein prohibited, for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure, or refusal, such public utility shall be subject to the penalty prescribed in section 11 of this act.

Reports and statements.

SEC. 36. Every annual report, record, or statement required by this act to be made to the commission shall be sworn to by the proper officer, agent or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record, or statement, shall be deemed perjury, and the person making such false oath shall, upon conviction, be punished as in the case of other perjuries.

Certificate must be procured.

SEC. 36½. Every public utility owning, controlling, operating or maintaining or having any contemplation of owning, controlling, or operating any public utility shall before beginning such operation or continuing of operations, or construction of any line, plant or system or any extension of a line, plant or system within this state, obtain from the public service commission a certificate that the present or future public convenience or necessity requires or will require such continued operation or commencement of operations or construction; *provided*, that nothing herein shall be construed as requiring a public utility to secure such certificate for any extension within any town or city within which it shall theretofore have lawfully commenced operations or for an extension into territory either within or without the city or town contiguous to its railroad, line, plant or system and not then served by a public utility of like character. Upon the granting of any certificate of public convenience, the commission may make such order and prescribe such terms and conditions for the location of lines, plants, or systems to be constructed, extended or affected as may be just and reasonable.

Every applicant for a certificate of public convenience shall furnish such evidence of its corporate character and of its franchise or permits as may be required by the commission. The commission shall have the power, after hearing, to issue or refuse such certificate of public convenience or to issue it for the construction of a portion only of the contemplated line, plant or system or extension thereof, and may attach thereto such terms and conditions as, in its judgment, the public convenience and necessity may require.

No public utility beginning, prosecuting or completing any new construction in violation of this act shall be permitted to levy any tolls or charges for services rendered and all such tolls and charges shall be void.

It shall be unlawful for any public utility to discontinue, modify or restrict service to any city, town, municipality, community or territory theretofore served by it, except upon twenty (20) days' notice filed with the commission, specifying in detail the character and nature of the discontinuance, or restriction of the service intended, and upon order of the commission, made after hearing, permitting such discontinuance, modification or restriction of service.

All hearings and investigations under this section shall be conducted substantially as is provided for hearings and investigations of tolls, charges, and service. Every order refusing or granting any certificates of public convenience, or granting or refusing permission to discontinue, modify or restrict service, as provided in this section, shall be *prima facie* lawful from the date of the order until changed or modified by the order of the commission or in pursuance of section 33 of this act; *provided, however*, that a municipality constructing, leasing, operating or maintaining any public utility shall not be required to obtain a certificate of convenience.

Disposition of surplus product.

SEC. 37. Whenever any person, company, corporation or association which is not engaged in business as a public utility as defined by this act, and which does not furnish, sell, produce or deliver to others, light, heat, power or water, under a franchise received from the state or from any county or municipality within the state, shall be able from any surplus beyond the needs or requirements of its own business, and shall desire to sell, produce, furnish and deliver to any other person, company, association or corporation, any light, heat, power or water, such person, company, association or corporation, shall apply to the public service commission for authority to sell, produce, furnish or deliver any such surplus light, heat,

power or water, and shall submit to the commission the proposed contract by which such light, heat, power or water is to be sold, furnished, produced or delivered.

The commission shall thereupon ascertain whether it is advisable in the public interest that such contract be executed and, if the commission shall approve such contract, then such person, company, corporation or association shall have the right to furnish, sell, produce and deliver such light, heat, power or water in accordance with the terms of such contract, and shall not thereby become a public utility within the meaning of this act, nor shall it be subject to the jurisdiction of the commission.

Commission may invoke remedies.

SEC. 38. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions thereof, and all orders of the commission, the commission may compel compliance with the provisions of this act and of the orders of the commission by proceedings in mandamus, injunction, or by other civil remedies.

Printing at state printing office.

SEC. 39. Except in cases of emergency, all the necessary printing of the commission shall be done at the state printing office, and it is made the duty of the state printer to have such printing done as expeditiously as possible.

Attorney-general legal counsel—District attorneys to aid.

SEC. 40. The attorney-general of Nevada shall be counsel and attorney for the commission in all actions, proceedings and hearings, and shall prosecute in the name of the State of Nevada all actions for the enforcement of this act and for the recovery of any penalty or forfeiture provided for herein, and shall prosecute all violations of the laws of this state by public utilities, their officers, agents and employees, and shall generally aid the commission in the performance of its duties and the enforcement of this act. The district attorney of the proper county, in the aid of any investigation, prosecution, hearing or trial had under the provisions of this act, shall upon the request of the attorney-general or the commission, act as counsel for the commission.

Penalties for violation.

SEC. 41. Any violation of the provisions of this act, where no penalty or punishment is prescribed therefor, shall be punished by a fine of not less than five hundred (\$500) dollars or more than one thousand (\$1,000) dollars.

Expenses of employees.

SEC. 42. The commission and secretary, and such clerks and experts as may be employed, shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expense and shall be approved by the chairman of the commission.

Commission may attend certain hearings.

SEC. 43. The commission may confer, by correspondence, with the railroad commissioners of other states, and with the interstate commerce commission on any matters relating to railroads and may attend hearings involving Nevada rates before the interstate commerce commission outside

the state after securing written approval of the state board of examiners. All necessary expenses incurred in attending such hearings shall be a charge against the state, and be audited and paid as other state claims are paid; *provided*, that all such claims shall be sworn to by the commissioner incurring the expense, and be approved by the chairman.

Supersedes railroad and public service commissions.

SEC. 44. The public service commission created hereby shall be considered the successor of the railroad commission of Nevada and the public service commission of Nevada as now constituted by law, and all hearings and proceedings of every kind and character now pending before said commissions or against said commissions, or either of them, shall be continued in the name of and before the commission created by this act, nor shall the repeal of any law by this act affect any act done, right established, or prosecution or proceeding commenced under and by virtue of the acts entitled "An act to regulate railroads, telegraph and telephone companies and other common carriers in this state, creating a railroad commission, constituting the governor, the lieutenant-governor, and the attorney-general a railroad board for the appointment and the removal of the railroad commissioners, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure an adequate railway service, and fixing maximum freight charges," approved March 5, 1907, and amended March 20, 1909, March 27, 1911, March 22, 1915, March 29, 1915, March 12, 14, 27, 1917, and "An act making the railroad commission of Nevada ex officio a public service commission for the regulation and control of certain public utilities, prescribing the manner in which such public utilities shall be regulated and controlled, requiring such public utilities to furnish reasonably adequate service and facilities, prohibiting unjust and unreasonable charges for services rendered by such public utilities, providing penalties for violation of the provisions of this act, authorizing such public service commission to appoint an expert engineer and to employ clerks and assistants, and making an appropriation for carrying out the provisions of this act," approved March 23, 1911, and amended March 25, 1915, March 29, 1915, and March 12, 1915.

Certain acts repealed.

SEC. 45. The act entitled "An act to regulate railroads, telegraph and telephone companies and other common carriers in this state, creating a railroad commission, constituting the governor, the lieutenant-governor, and the attorney-general a railroad board for the appointment and the removal of the railroad commissioners, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure an adequate railway service, and fixing maximum freight charges," approved March 5, 1907, and all acts amendatory or supplemental thereto, and the act entitled "An act making the railroad commission of Nevada ex officio a public service commission for the regulation and control of certain public utilities, prescribing the manner in which such public utilities shall be regulated and controlled, requiring such public utilities to furnish reasonably adequate service and facilities, prohibiting unjust and unreasonable charges for services rendered by such public utilities, providing penalties for violation of the provisions of this act, authorizing such public service commission to appoint an expert engineer and to employ clerks and assistants, and making an appropriation for carrying out the provisions of this act," approved March 23, 1911, and all acts amendatory and supplemental thereto are hereby repealed.

SEC. 46. [Carrying appropriation; omitted.]

An Act regulating the placing, erection, use and maintenance of electric poles, wires, cables and appliances, conferring jurisdiction of this act upon the public service commission of the State of Nevada, authorizing said commission to make and enforce rules and regulations in addition to this act, and providing the punishment for the violation of the provisions of this act.

Approved March 26, 1913, 440

Regulating placing of electric wires.

SECTION 1. No commission, officer, agent or employee of the State of Nevada, or of any city and county or city or county or other political subdivision thereof, and no other person, firm or corporation shall

(a) Run, place, erect, or maintain any wire, cable, or other conductor used to conduct or carry electricity on any pole or on any cross-arm, bracket, or other appliance attached to such pole within a distance of sixteen (16) inches from the center line of said pole; *provided*, that the foregoing provisions of this paragraph (a) shall be held not to apply to one or two telephone or telegraph cables attached directly to one side of the pole and which are at least six (6) feet, at point of attachment, from any wire, cable or other conductor carrying at any one time more than six hundred (600) volts of electricity; *and further provided*, that the foregoing provisions shall be held not to apply to telephone, telegraph or other "signal" wires or cables, which are attached to a pole to which is attached no wires or cables other than telephone, telegraph or other "signal" wires; nor shall the foregoing provisions be held to apply to such wires or cables in cases where the same are run from underground and placed vertically on poles, nor to "bridle" or "jumper" wires on any pole which are attached to telephone, telegraph or other "signal" wires on the same pole; nor to any "aerial" cable as between such cable and any pole on which it originates or terminates; nor to transformers placed upon poles, nor to any wire or cable where the same is attached to the top of the pole as between it and the said pole, nor to any "aerial" cable containing telephone, telegraph or other "signal" wires where the same is attached to a pole on which no other wires or cables and wires continuing from said cable are maintained; *provided*, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said "aerial" cable is placed.

(b) Run, place, erect or maintain in the vicinity of any pole (and unattached thereto) within the distance of sixteen (16) inches from the center line of said pole, any wire, cable or other conductor used to conduct or carry electricity, or place, erect or maintain any pole (to which is attached any wire, cable or other conductor used to conduct or carry electricity) within the distance of sixteen (16) inches (measured from the center of such pole) from any wire, cable or other conductor used to conduct or carry electricity; *provided*, that as between any wire, cable or other conductor and any pole, as in this paragraph (b) named, only the wire, cable or other conductor or pole last in point of time run, placed or erected, shall be held to be run, placed, erected or maintained in violation of the provisions of this paragraph; *and further provided*, that the provisions of this paragraph (b) shall not be held to apply to telephone, telegraph or other "signal" wires or cables.

(c) Run, place, erect or maintain, above ground, within the distance of four (4) feet from any wire, cable or other conductor conducting or carrying less than six hundred volts of electricity, any wire, cable or other conductor which shall conduct or carry at any one time more than six hundred volts of electricity, or run, place, erect or maintain within the

distance of four (4) feet from any wire, cable or other conductor which shall conduct or carry at any one time more than six hundred volts of electricity, any wire, cable or other conductor conducting or carrying less than six hundred volts of electricity; *and further provided*, that wires, cables or other conductors carrying more than six hundred volts of electricity may be placed on the same cross-arm with wires, cables or other conductors carrying less than six hundred volts of electricity, if the space between any wire, cable or other conductor carrying or conducting at one time more than six hundred volts of electricity and any wire, cable or other conductor carrying less than said voltage shall be at least thirty-two (32) inches clear measurement in a horizontal line, and four (4) feet in a vertical direction; *provided*, that the foregoing provisions of this paragraph (c) shall be held not to apply to any wires, cables or other conductors attached to a transformer, arc or incandescent lamp within a distance of four (4) feet (measured along the line of said wire, cable or other conductor) from the point where such wire, cable or other conductor is attached to such transformer, arc or incandescent lamp, nor to wires, cables or other conductors within buildings or other structures nor to wires, cables or other conductors where the same are run from underground and placed vertically on poles, nor to any "lead" wires or cables between the point where the same are made to leave any pole for the purpose of entering any building or other structure, and the point at which they are made to enter such building or structure, nor to any circuit installed for the purpose of leading off or "bucking" from a circuit where it is impracticable to maintain wires otherwise than in a level position; *provided, however*, that at all times a clearance of not less than two (2) feet in a vertical direction at point of crossing is maintained between wires, cables or other conductors carrying at any time more than six hundred volts of electricity and wires, cables or other conductors carrying less than six hundred volts of electricity; *and provided further*, that as between any two wires, cables or other conductors, or any wire, cable or other conductor run, placed, erected or maintained in violation of the provisions of this paragraph (c), only the wire, cable or other conductor last in point of time run, placed, erected or maintained shall be held to be run, placed, erected or maintained thus in violation of said provision.

(d) Run, place, erect or maintain, any wire, cable or other conductor which shall conduct or carry at any one time more than six hundred volts of electricity, without causing each cross-arm, or such other appliance as may be used in lieu thereof, to which such wire, cable or other conductor is attached to be kept at all times painted a bright-yellow color; or, on such cross-arm, or other appliance used in lieu thereof, shall be placed enameled iron signs, providing, in white letters on a green background, the words "High Voltage," and these letters shall not be less than three (3) inches in height, and said signs shall be securely fastened on the face and back of each cross-arm. The provisions of this paragraph (d) shall not be held to apply to cross-arms to which are attached wires, cables or other conductors carrying or conducting more than fifteen thousand (15,000) volts of electricity.

(e) Run, erect, place or maintain any "guy" wire or "guy" cable attached to any pole or appliance to which is attached any wire cable or other conductor used to conduct or carry electricity without causing said "guy" wire or "guy" cable to be effectively insulated at all time at a distance of not less than four (4) feet nor more than eight (8) feet (measured along the line of said wire, cable or other conductor) from the upper end thereof, and at a point not less than eight (8) feet vertically above the ground from the lower end thereof; *and provided further*, that whenever two or more "guy" wires or "guy" cables are attached to same pole and same

anchorage, there shall be at least one (1) foot vertical space between the points of attachment; *and further provided*, that no insulation shall be required at the lower end of a "guy" wire or "guy" cable where the same is attached to a grounded anchor; *and provided further*, that where "guy" is attached to a pole or structure of steel or other conducting material, which is thoroughly grounded, no insulation shall be required at any point in said guy; none of the provisions of this paragraph (e) shall be held to apply to "guy" wires or "guy" cables attached to poles carrying no wire, cable or other conductor other than telephone, telegraph or other "signal" wire or cable.

(f) Run, place, or erect, or maintain, vertically on any pole, any wire, cable or other conductor used to conduct or carry electricity, without causing such wire, cable or other conductor to be at all times wholly encased in casing equal in durability and insulating efficiency to a wooden casing not less than one and one-half ($1\frac{1}{2}$) inches thick. The provisions of this paragraph (f) shall not be held to apply to vertical telephone, telegraph or other "signal" wires or cables on poles where no other than such wires or cable are maintained.

(g) Place, erect or maintain on any pole, or on any cross-arm or other appliance on said pole, which carries or upon which is placed an electric arc lamp, any transformer for transforming electric currents.

Exceptions to application of act.

SEC. 2. None of the provisions of the preceding section shall be held to apply to "direct-current" electric wires, cables or other conductors having the same polarity, nor to "signal" wires when no more than two (2) of such "signal" wires are attached to any one pole; *provided*, that none of such "direct-current" or "signal" wires shall in any case be run, placed, erected or maintained within the distance of sixteen (16) inches from the center line of any pole (other than the pole or poles on which said wires, cables or other conductors are carried) carrying electric wires, cables or other conductors; *and provided further*, that as between any two wires, cables or other conductors, or any wire, cable or other conductor run, placed, erected or maintained in violation of the provisions of this section (2) only the wire, cable or other conductor last in point of time run, placed, erected or maintained shall be held to be run, placed, erected or maintained thus in violation of said provisions.

Further specific regulations.

SEC. 3. No commission, officer, agent or employee of the State of Nevada, or of any city and county or city or county or other political subdivision thereof, and no other person, firm or corporation shall run, place, erect or maintain any "span" wire attached to any wire, cable or other conductor used to conduct or carry electricity, without causing said "span" wire to be at all times effectively insulated between the outer point at which it is in any case fastened to the pole or other structure by which it is hung or supported, and at the point at which it is in any case thus attached; *provided*, that such insulation shall not in any case be placed less than two (2) feet or more than four (4) feet from said point at which said "span" wire is so attached.

Public service commission to facilitate enforcement.

SEC. 4. The public service commission of the State of Nevada shall do all things necessary and convenient for the enforcement of the provisions of this act, and shall make and prescribe such rules, regulations and course of procedure for the enforcement of the provisions of this act as such commission shall deem necessary and proper, and upon application by any

person or persons either in writing or in person, they shall make such further rules and regulations regarding the construction, maintenance and operation of the plants and devices used to generate and distribute electricity in this state, as may appear necessary and reasonable to them, which procedure, rules and regulations shall have the same force and effect as this act; *provided*, that nothing in this act shall be construed as vesting judicial powers in said commission or as denying to any person, firm, association, municipality, county, town or village the right to test in a court of competent jurisdiction the legality or reasonableness of any final orders made by the commission in the exercise of its duties and powers.

Penalty for violation.

SEC. 5. Any violation of any of the provisions of this act shall be deemed a misdemeanor and shall be punishable upon conviction by a fine of not exceeding five hundred dollars (\$500), or by imprisonment in a county jail not exceeding six (6) months, or by both such fine and imprisonment.

Each section declared independent.

SEC. 6. Each section of this act and every part of each section are hereby declared to be independent sections and parts of sections, and the holding of any section or part of section to be void or inoperative for any cause shall not be deemed to affect any other section thereof.

Repeal.

SEC. 7. All acts or parts of acts which are in conflict herewith are hereby repealed.

In effect, when.

SEC. 8. This act shall take effect six (6) months from the date of its passage in so far as it relates to new work, and a period of five (5) years shall be allowed in which to reconstruct all existing work and construction to comply with the provisions of this act.

An Act prescribing the duties of public service water companies in the matter of furnishing water for fire protection.

Approved March 26, 1913, 387

Must furnish sufficient water.

SECTION 1. Any person, firm, association or corporation, who or which, as a public utility, is now, or may hereafter be, engaged in the business of furnishing for compensation, any city, town, village or hamlet within this state with water for domestic purposes, shall be lawfully bound to furnish said city, town, village or hamlet a reasonably adequate supply of water at reasonable pressure for fire protection and at reasonable rates, all to be fixed and determined by the public service commission of this state.

Must lay and maintain fire mains.

SEC. 2. The duty to furnish a reasonably adequate supply of water provided for in section 1 shall be deemed to include the laying of mains with all necessary connections for the proper delivery of the water for fire protection and also the installing of such appliances as will assure a reasonably sufficient pressure for such purpose.

Public service commission.

SEC. 3. The public service commission of this state shall have full power and authority to fix and determine reasonable rates for the service herein

provided for, and to prescribe all installations and appliances fairly adequate for the proper utilization and delivery of water for the purpose named. The said commission shall also have authority to prescribe rules, regulations and practices to be followed by any of the parties mentioned in section 1, in furnishing water for fire protection and shall have complete jurisdiction of all questions arising under the provisions of this act.

Proceedings to conform to provisions of public service act.

SEC. 4. All proceedings under this act shall be in conformity with the provisions of that certain act entitled, "An act making the railroad commission of Nevada ex officio a public service commission for the regulation and control of certain public utilities, prescribing the manner in which such public utilities shall be regulated and controlled, requiring such public utilities to furnish reasonably adequate service and facilities, prohibiting unjust and unreasonable charges for services rendered by such public utilities, providing penalties for violation of the provisions of this act, authorizing such public service commission to appoint an expert engineer and to appoint clerks and assistants, and making an appropriation for carrying out the provisions of this act," approved March 23, 1911. All violations of any order made by the said public service commission under the provisions of this act shall be subject to the penalties for like violations of the provisions of the act, full title of which is in this section above set forth.

Applies to all water companies.

SEC. 5. This act shall be deemed to apply to and govern all public utilities now furnishing water for domestic use unless otherwise expressly provided in the charters, franchises, or permits under which such utilities are acting, and it is specifically provided that all persons, firms, associations or corporations hereafter engaging in the business of a public utility to supply any city, town, village or hamlet with water for domestic uses shall be subject to the provisions of this act, regardless of any conditions to the contrary in any charter, franchise or permit of whatsoever character granted by any county, city, town, village or hamlet within this state, or of any charter, franchise or permit granted by any authority outside the State of Nevada.

RABIES COMMISSION

An Act creating the state rabies commission, prescribing its membership and duties, and making an appropriation for the control and eradication of rabies and noxious animals within the State of Nevada, in cooperation with the biological survey of the U. S. Department of Agriculture.

Approved March 8, 1917, 54

Commission created—How composed.

SECTION 1. That for the purpose of cooperating with the biological survey of the U. S. Department of Agriculture, for the control and eradication of rabies and noxious animals within the State of Nevada, there is hereby created the state rabies commission, consisting of the governor and four members to be appointed by the governor, one of whom shall be the director of the state veterinary control service, who shall act as secretary of the commission without extra compensation as such, and one each to be appointed from the state board of sheep commissioners, the state board of stock commissioners, and the state board of health. The governor shall be ex officio chairman of said commission. The members of said commission shall serve without salary, but shall be allowed their traveling and living

expenses while attending meetings, or otherwise directly engaged in such control or extermination work.

Appropriation.

SEC. 2. For the cooperative support of the work of control and eradication of rabies and noxious animals as aforesaid there is hereby appropriated thirty-five thousand (\$35,000) dollars annually for each of the fiscal years 1917 and 1918, from any moneys in the state treasury not otherwise appropriated. For said fiscal years 1917 and 1918 an ad valorem tax of two cents on each one hundred dollars of taxable property in the State of Nevada is hereby levied and directed to be collected upon all such taxable property in the state, including net proceeds of mines, the proceeds of which shall be placed in a special fund in the state treasury for the purpose of meeting the appropriation heretofore provided for in this section. All claims against said fund and appropriation shall be approved by the chairman and secretary of said commission and by said board of examiners.

Duties.

SEC. 3. It shall be the duty of said commission to enter into a definite agreement with said biological survey, prescribing the manner, terms, and conditions of such cooperation, and the amounts which the state and federal government will respectively contribute thereto, for each of said fiscal years, and said commission in its work under the provisions of this act shall be governed by said agreement.

RACING COMMISSION

An Act to regulate the racing of horses in the State of Nevada, and to establish a state racing commission, and to define its powers and duties, and prescribing a penalty for violation thereof.

Approved February 20, 1915, 23

Races permitted under restrictions.

SECTION 1. Any association or corporation formed for the purpose of racing and breeding or improving the breed of horses and conducting races and contests of speed between horses shall have the right and power, subject to the provisions of this act, to hold one or more race meetings in each year and to hold, maintain and conduct horse-races at such meetings. At such meetings the corporation or association or the owners of the horses engaged in such races, or others who are not participants in the racing, may contribute purses, prizes, premiums, or stakes to be contested for, but no person or persons other than the owners of a horse or horses contesting in a race shall have any pecuniary interest in a purse, prize, premium, or stakes contested for in such races or be entitled to or receive any portion thereof after such races shall have been finished; and the whole of such purse, prize, premium, or stakes shall be allotted in accordance with the terms and conditions of such race.

Term of meetings limited.

SEC. 2. Such race meetings shall not exceed thirty days racing, nor shall any meeting be given where bookmaking is allowed, nor shall any person, association, or corporation furnish to poolrooms or their agents any information whatever in regard to racing, or permit to be furnished from any course or premises any such information. Any person, association, or corporation who shall conduct any race meeting contrary to the provisions of this act, or engage in bookmaking on horse-races, or furnish or allow to

be furnished any information whatever to poolrooms contrary to this act, are hereby declared to be guilty of a misdemeanor; and any person, association, or corporation acting or aiding them shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than five hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment.

No Sunday racing.

SEC. 3. No horse-races are authorized or shall be permitted between sunset and sunrise or on Sundays.

Racing commission established; personnel.

SEC. 4. A state racing commission is hereby established to consist of three persons to be appointed by the governor, within twenty days after this law shall be in force. The members of said commission shall hold their offices for a term of four years; *provided*, that the commissioners first appointed shall determine, by lot, one of themselves to go out of office at the end of each two years. The successor of each commissioner so going out of office shall hold office for the full term of four years.

To appoint secretary—Salary—Biennial report.

SEC. 5. Such commission shall appoint a secretary who shall serve during its pleasure, whose duty it shall be to keep a full and faithful record of its proceedings, and preserve at its general office all books, maps, documents, and papers entrusted to its care, and perform such other duties as the commission shall prescribe. He shall be paid a salary to be fixed by the commission at a rate not exceeding eighteen hundred dollars per annum, which, together with other expenses of the commission, shall be paid by the racing corporations or associations who shall obtain licenses from said commission. The commission shall biennially make a full report to the governor of its proceedings for the two-year period ending with the first day of January preceding the meeting of the legislature, and shall embody therein such suggestions and recommendations as it shall deem desirable.

To prescribe rules—License revoked, when.

SEC. 6. Such commission shall have the power to prescribe the rules, regulations, and conditions under which horse-races shall be conducted in this state, and no races shall be conducted except by an association or corporation duly licensed by said commission as herein provided. Any association or corporation desiring to conduct such racing may apply to the state racing commission for a license so to do. The commission may, in its discretion, grant the same for not to exceed one year, and every such license shall contain a condition that all races or race meetings conducted thereunder shall be subjected to the rules, regulations, and conditions from time to time prescribed by the commission, and shall be revocable by the commission for any violation thereof, or whenever the continuance of such license shall be deemed by the commission not conducive to the interests of legitimate racing. But if said license is refused or revoked said commission shall cause its reasons for so doing to be written in full in the minute-books of said commission, which books shall at all times be open to inspection by any one. The refusal of the commission to grant to any racing association or corporation a license, or to assign a racing association or corporation at least sixty days in each year, if desired, for racing at such place as such association or corporation may desire and the decision of such commission revoking any license of any association or corporation shall be subject to review of the courts of this state.

Unauthorized race meetings prohibited.

SEC. 7. Every race meeting held or conducted, except as allowed by this act, is hereby declared to be a public nuisance, and every person acting or aiding therein shall be deemed guilty of a misdemeanor and punished by a fine of not less than five hundred dollars nor more than one thousand dollars for each day of such meeting and racing; and a restraining order may issue against any proposed unauthorized race meeting at the suit of the state racing commission.

Certain provisions not to apply.

SEC. 8. The provisions of this act relative to the payment to the said state racing commission of proportionate moneys to pay the expenses of conducting said commission shall not apply to race meetings conducted by any state fair association, agricultural society, county fair, or any other association to which state or county aid is given; and no such state fair association shall hold a race meeting for a period of more than twelve days in any one year; and no such agricultural society, county fair, or other association to which state or county aid is given shall hold a race meeting for a period of more than six days in any one year.

Commission from pari-mutuel betting, how disposed of.

SEC. 9. Any association or corporation conducting horse-racing in the State of Nevada where pari-mutuels may be permitted shall take out such commission from all moneys received from the sale of pari-mutuels as may be prescribed by the state racing commission, not to exceed eight per cent; one-sixth of which shall be paid by said association or corporation daily to the said state racing commission, and shall be paid by said state racing commission to the state treasurer, which money shall be paid said state treasurer and placed in the state highway fund as defined by law, to be used by the department of highways in the building, improvement, and care of the state highways. It is hereby made the duty of the state racing commission, and they are hereby granted the power, to inspect the books of any such association or corporation and to revoke their licenses unless the said books are fully, accurately, and fairly kept. *As amended, Stats. 1917, 324.*

Unlawful to bribe or influence jockeys—Penalty.

SEC. 10. It shall be unlawful for any person or persons to bribe, influence, or have any understanding or connivance with any jockey, owner, groom, or any one connected with any of the stables, horses, racing, or races at any race meeting, and any one violating this provision shall be guilty of a felony and upon conviction shall be imprisoned in the state prison for a period of not less than three years or more than ten years.

RAILROAD COMMISSION

4552. Change in tariff schedule takes effect upon compliance with this section, notwithstanding failure to post notice whenever a change is made as required by subdivision (b); the only effect of such failure being liability by railroad for damages resulting therefrom under Rev. Laws, 4574. *Crumley v. Southern Pacific Company, 42 Nev. 337, 340 (117 P. 17, 18).*

4584. Cited, *State ex rel. Pacific Reclamation Company v. Duckert*, 35 Nev. 223 (127 P. 990).

4574. See *Crumley v. Southern Pacific Company*, 42 Nev. 337, under section 4552.

4549-85. Repealed, Stats. 1919, 215, and the public service commission act, Stats. 1919, 198, ante, substituted.

SCHOOL OF INDUSTRY

An Act establishing a state institution for delinquent boys, providing for the purchase of a site, erection of buildings, organizing the government of said school, and providing for the maintenance thereof, and creating a tax levy to raise funds for such purposes.

Approved March 26, 1913, 384

Establishing school.

SECTION 1. There shall be established in the manner hereinafter provided a state institution to be known as "The Nevada School of Industry."

For delinquent boys—Proviso regarding girls.

SEC. 2. Said school shall be designed and calculated to provide a suitable home for boys committed thereto under the laws of Nevada relating to the care of children who have been adjudged delinquent, and for the moral, industrial and general education of such boys; *provided*, that the permanent board of government hereinafter created shall be authorized to provide for the care of delinquent children of either sex properly committed thereto, either at this school, or by sending female delinquents to other institutions of a like kind for females, and are authorized to pay the expense of transportation and maintenance of children sent to such other institution out of the fund hereinafter created by this act.

Governor to appoint commission—School in Elko.

SEC. 3. It shall be the duty of the governor of Nevada, on or before the 31st day of March, 1913, to appoint two persons who, together with the governor, shall constitute a commission for the establishment of a school of industry at the town of Elko, Elko County, Nevada, upon a ten-acre site to be deeded to the state without charge; conditioned upon the payment to the commission by the citizens of Elko of the sum of five thousand dollars to assist in the construction of suitable buildings for such home.

Secs. 4, 5, and 6, relating to erection of building, omitted.

Clerk to be appointed.

SEC. 7. Said commission shall have authority to employ a clerk to keep its records and accounts, and to incur such expense as may be necessary for architectural advice, stenographic service, and any other incidental expense as shall be approved as necessary by the commission.

All expenditures published.

SEC. 8. All expenditures made by said commission in the performance of the duties in this act imposed, shall be audited by the state controller, and once every month said auditor shall publish in some newspaper of general circulation in Nevada, an abstract of expenditures to date, up to the time of the completion of said building or buildings.

Who constitute permanent board—Superintendent; salary.

SEC. 9. The permanent board of government of said institution shall consist of the governor of Nevada and four persons to be appointed by him, and removable by a majority vote of the members of the board. The terms of office of such members, other than the governor, shall expire one each year, beginning January 1, 1915, and in the appointments the times of expiration of the first appointees shall be designated in the respective appointments, and thereafter their terms of office shall be four years each. The members of said board shall serve without compensation, but necessary and reasonable expenses incurred by them in the performance of their duties as members of said board shall be paid out of the appropriations

made for the maintenance of said school, when approved by the board. They shall appoint a superintendent of the school, whose salary shall be not more than \$2,400 per year, payable monthly, and who shall hold office during the pleasure of the board. The board of government is hereby authorized to accept gifts, and in order that the home herein provided for may be prepared as soon as possible, to borrow money at a rate not to exceed 6 per cent, to be repaid from the fund created by this act.

Bond of superintendent.

SEC. 10. The superintendent shall give such bond for the faithful performance of his duties as shall be prescribed from time to time by the board, and shall, subject to the regulations prescribed by the board, be invested with the custody of the lands, buildings and other property belonging to the institution. He shall appoint, subject to the approval of the board, all teachers, officers and employees who shall hold office during his pleasure.

Education and training of inmates.

SEC. 11. The board shall cause to be organized and maintained a department of instruction for the inmates of said school, with a course of study corresponding, so far as practicable, with the course of study in the state public schools and not higher than the high-school courses. They shall adopt a system of government embracing such rules and regulations as are necessary for the guidance of the teachers, officers and employees, for the regulation of the hours of labor and study, for the preservation of order, for the enforcement of discipline, and for the industrial training of the inmates. The ultimate purpose of all such instruction, training, discipline and industries shall be to qualify inmates for profitable and honorable employment and to enable them to lead useful lives after their release from the institution rather than to make said institution self-supporting.

School regulations and rules.

SEC. 12. The rules and regulations of said school and the conduct thereof by said board and said superintendent shall be in strict harmony with and obedience to the laws of the State of Nevada, and the judgments and orders of the district courts of the several judicial districts rendered and made in accordance with the laws of Nevada.

Construction of act—Inmates may receive moderate pay.

SEC. 13. This act shall be construed in conformity with the intent as well as the expressed provisions thereof, and shall confer upon the board authority to do all those lawful acts which it deems necessary to promote the prosperity of the school, and the well-being and education of its inmates, including the organization of trade schools, purchase of materials for use therein, and the doing of all other things, not prohibited, which are required to carry out the purposes of this act. The board is further authorized to pay those committed to said school small weekly or monthly sums in lieu of clothing and other necessary articles, if, in its judgment, such a course would better promote discipline and training; and for this purpose and also to meet small current and incidental expenses the said board is hereby authorized to place in the hands of the superintendent of this industrial school, through requisitions approved by the state board of examiners and issued and paid by warrants as provided herein, sums of money, not to exceed five hundred dollars at any one time; *provided*, that the superintendent shall make a complete financial report each month to the board of trustees of all moneys handled by him.

Method of commitment.

SEC. 14. When the premises are ready for occupancy, the governor shall

make due proclamation thereof. Thereafter it shall be lawful for the courts to commit to said institution those boys whom they have found to be delinquents as provided by law, and when any commitment is thus issued under the provisions of this act the child thus committed, together with the warrant of the judge and the order of commitment, shall be delivered to the sheriff of the county and by him to the superintendent of the Nevada school of industry, who shall convey or cause to be conveyed under his order said child to the Nevada school of industry. *As amended, Stats. 1919, 52.*

SEC. 15. [Imposing tax for 1913 and 1914; omitted.]

SHEEP COMMISSION

4586—4602. Repealed, Stats. 1919, 145, and the following act (Stats. 1919, 134) substituted:

Stats. 1915, 294, 371, repealed, Stats. 1919, 145.

BOARD OF SHEEP COMMISSIONERS

An Act regulating the sheep industry in the State of Nevada, creating a state board of sheep commissioners, defining their powers and duties, prescribing their compensation, and providing penalties for the violation hereof.

Approved March 25, 1919, 134

Board created.

SECTION 1. That a state board of sheep commissioners be and the same is hereby created.

Number of members—Bonds—Salaries—Meetings.

SEC. 2. The state board of sheep commissioners, hereinafter called the board, shall consist of three (3) members, all of whom shall be experienced wool-growers, and no two of whom shall be from the same county, said members to be appointed by the governor, and to hold their office for four years, and until their successors are duly appointed and qualified. Each of said commissioners, before entering upon the duties of his office, shall take and subscribe to the constitutional oath of office and enter into a bond with sufficient surety or sureties in the penal sum of twenty-five hundred dollars (\$2,500), payable to the State of Nevada, and conditioned for the faithful performance of the duties of his office, which bond shall be approved by the governor, and filed in the office of secretary of state. The members of the board shall each receive for their services five hundred dollars (\$500) per annum and actual transportation expenses while in discharge of their duties. Said salaries and compensation shall be paid from the state treasury in the same manner as the salary of state officers. Each member of said board shall be a qualified elector of the county from which he is chosen, and must reside during his term of office within the state. Said board must hold their meetings annually, and oftener if so requested by any member of the board.

Duties of board.

SEC. 3. The board shall elect one of its members president. The said board is empowered to make rules and regulations for governing itself, and such rules and regulations as it may deem necessary for the enforcement of the provisions of this act, and shall have exclusive control of all matters pertaining to the sheep industry. It shall be empowered to make and enforce rules and regulations for the quarantining, dipping, or any other treatment of sheep which may be infected, affected, or infested with scabies, ticks, lice, or any other parasites detrimental or injurious to sheep,

or any infectious or contagious disease of sheep, and for the speedy and effective suppression and extirpation of infectious or contagious diseases, scabies, ticks, lice, or other parasites detrimental to sheep, as are not in conflict with the provisions of this act.

The board is authorized to appoint an inspector in charge, whose duties and powers shall be defined and prescribed by said board, which said officer, before entering upon the duties of his office, shall execute and file a bond in the sum of one thousand dollars (\$1,000), payable to the State of Nevada, for the faithful performance of his duties, with and to be approved by the board. The inspector in charge shall receive such compensation as may be allowed by said board and actual and necessary expenses incurred in the performance of his duties. The inspector in charge shall be at all times subject to the authority of the board and shall have the same powers hereinafter provided for all other inspectors appointed by the board under this act.

The board shall appoint a secretary, prescribe his duties, and fix his salary, which shall not exceed seven hundred and fifty dollars (\$750) per annum. The board shall maintain an office at some point within this state to be determined by the board. The maintenance of such office and the secretary's salary shall be paid from the state treasury in the same manner as the salary and expenses of state officers. The board shall fix the rate of tax to be levied, as provided for in section four of this act, and shall send notice of the same to the county commissioners of the several counties of the state on or before the first day of August of each year. The board shall audit all bills of salaries and expenses incurred in the enforcement of this act that may be payable from the sheep inspection fund, which shall be audited, allowed and paid as other claims against the state. The board shall make an annual report in writing to the governor on or before the thirtieth (30th) day of November in each year, giving a statement of the transactions of the board, and facts relating to the condition of the sheep industry in this state.

The board shall have power to order an inspection or quarantine of any sheep in the State of Nevada, compel dipping or other treatment of sheep at such times and as often as it deems necessary to insure the suppression or eradication of scabies, ticks, lice or other parasites detrimental to sheep, or any infectious or contagious disease of sheep, and divide the state into such districts as may be necessary for the enforcement of this act, which said districts shall be under the supervision of one of the commissioners.

The board shall have the power to quarantine and compel the cleaning and disinfecting of any shearing or dipping corrals or places where sheep are handled, and when owners or persons in charge of such corrals or places fail or refuse to clean or disinfect such corrals or places the board shall have power to order the inspector to take charge of such corral or place and clean and disinfect it, the expense of which shall be paid by the owner or person in charge, and shall be a lien on such corral or place until the expense is paid.

All orders, rules or regulations made by the board must be published at least twice in some newspaper having general circulation in the state, which shall constitute legal notice upon all owners of sheep and other persons of the order made.

Annual tax.

SEC. 4. The board of county commissioners, at the time of the annual levy of taxes, must, at the request of the board, levy the rate of tax recommended by the board, not to exceed six (6) mills on the dollar, on all sheep assessed in their respective counties, according to the assessed valuation of the same, the said tax to be collected as other taxes and paid to the

state treasurer, who must keep the same in a separate fund to be known as the sheep inspection fund.

Duties of county officers.

SEC. 5. The county assessor must, on or before the first Monday in September of each year, prepare from the assessment book of such year, as corrected by the board of county commissioners, a statement showing the total number of all sheep assessed and the value of the same. And the county treasurer must notify the state board of sheep commissioners of all moneys forwarded to the state treasury belonging to the state sheep inspection fund at the time said moneys are forwarded to the state treasury. Also make final report to said board at the time he makes settlement with the state controller.

Duties of board.

SEC. 6. The board shall have charge of the enforcement of the provisions of this act, and of all rules and regulations made and adopted by it. The board shall appoint such inspectors as may be necessary, and said inspectors, before entering upon the duties of their office, shall file a bond in the sum of one thousand dollars (\$1,000), payable to the state, for the faithful performance of their duties, with and to be approved by the board. Such inspectors shall receive five dollars (\$5) per diem, and actual and necessary transportation expenses incurred in the performance of their duty, to be paid from the sheep inspection fund. The board and each inspector must keep a book, to be known as the inspection record, in which they must enter their official acts. Such record must show the name of the owner of every flock of sheep inspected, and the time when and the place where the same was inspected. Inspectors shall have the right at all times to enter any premises, farms, fields, pens, slaughter-houses, buildings, cars, or railroad cars, where any sheep are quartered, for the purpose of examining them, for the purpose of determining whether they are infected with any infectious or contagious disease. All inspectors and their deputies shall have the same powers and authority of peace officers. The board shall have the power to order an inspector to quarantine any corral, pens, slaughter-house, buildings, cars, and railroad cars where sheep may have been handled, and compel the cleaning and disinfecting of the same, when deemed necessary for the purposes of this act. Where owners or persons in charge of such places, corrals, pens, slaughter-houses, buildings, cars, and railroad cars refuse to clean and disinfect them, the inspector shall have the right to take charge of such places, corrals, pens, slaughter-houses, buildings, cars, and railroad cars, and cause the same to be cleaned and disinfected, the expense of which must be paid by the owner or person in charge, and shall be a lien upon such premises, corrals, pens, slaughter-houses, buildings, cars, etc., until such expense is paid.

Inspectors to report.

SEC. 7. Inspectors shall report to the board in writing as often and at such times as may be requested by the board.

Duties of inspectors.

SEC. 8. Each inspector must inspect all the sheep within the district assigned to him, when so ordered by the board, and must make and issue certificate or bill of health for all sheep whose owners have complied with the law and the orders, rules and regulations made and adopted by the board, describing the sheep with the marks and brands thereon, which shall entitle the owner or agent in charge to pass with such sheep from one district to another in the state. The inspector shall immediately file with

the board a duplicate of all certificates issued by him. The term "sheep" shall include goats, lambs, and kids.

Diseased sheep destroyed, when—Proviso.

SEC. 9. When sheep become infected with foot-and-mouth disease, or any incurable, infectious, or malignant disease, said board has the authority, if necessary, to order such diseased sheep destroyed; *provided*, in case said board orders sheep killed, it shall pay to the owner thereof, out of any funds it has on hand, one-half the market price of said sheep; *provided, further*, said board shall not at any time pay more than four (\$4) dollars the head for any one such sheep so killed or destroyed.

Bounties for killing noxious animals.

SEC. 10. The board is authorized and empowered to offer and pay bounties out of its funds for the killing and destruction of the following-named animals, killed in the State of Nevada, to wit: For each coyote or coyote pup, seventy-five (75c) cents; for each wildcat or lynx, seventy-five (75c) cents; and for each mountain lion, five (\$5) dollars. Any person killing any of the aforesaid animals in order to obtain the bounty provided for herein shall, within ninety (90) days of the date of the killing, present or cause to be presented by his duly authorized agent, to the county clerk of the county in which said animal or animals have been killed, the entire skin of each of said animal or animals, which skin includes and must have attached thereto all four of the paws, or feet, the tail, and the skin of the head, eye-holes, and the skin to tip of nose; and shall at the same time make and file with the said county clerk an affidavit, which said affidavit shall state: first, the kind of animal or animals from which said skin or skins were taken and the number of skins presented; second, that the county in which said animal or animals were killed is the county in which their skins are presented for payment of a bounty; third, that said animal or animals from which said skins were taken were not bought or received, dead or alive, from any other county or state; fourth, that said animals were killed within ninety (90) days from the date of making such affidavit; fifth, that said animal or animals were killed in such county, and in the State of Nevada; and, sixth, that the same were not fostered or whelped in captivity prior to the killing thereof. The said county clerk may, if he deems it advisable, require of such applicant for bounty such other corroborative testimony as to him seems proper concerning the truth set forth in such affidavit; *provided*, that when in doubt as to the kind of skin or skins presented, the order shall be issued for the lesser bounty. The county clerk shall cut off the four (4) paws or feet at the knee, and also cut off the ears and scalp and destroy them. The said clerk shall then certify to the said board that he received the said hides, that the required affidavit or affidavits have been made, and that he has destroyed the four feet, scalp, and ears in conformity with law, and also certify the name of the animals killed, the number, where killed, and by whom, and the bounty due. The board shall forthwith remit the bounty due to the party presented.

Inspector to act, when.

SEC. 11. Whenever upon examination by a sheep inspector any flock of sheep kept or herded in the State of Nevada shall be found to be infected with scabies, or any infectious or contagious disease, or to have been exposed in any manner to such scabies or disease, the inspector shall at once establish regulations for their quarantine, which shall define the place and limits within which such sheep may be grazed, herded, or driven. Said inspector shall forthwith notify the owner or person in charge of said sheep, in writing, of the fact that the said sheep are affected or diseased,

and shall thereupon take charge of and treat said sheep for dipping or other treatment as the case may require. That in case of scabies, within a period of not less than ten days nor more than fourteen days immediately succeeding said first dipping or treatment, the inspector shall again dip said sheep. The said inspector shall also keep such flock of sheep so infected or diseased with scabies or any infectious or contagious disease from contact with other sheep by such means as he may specify, and until such time as the inspector is satisfied of the complete eradication of such scabies or infectious or contagious disease, at which time said inspector shall issue, in writing, a permit or certificate to the owner or person in charge of said sheep, releasing said sheep from quarantine. Said inspector shall have the power to give such notice, as in his judgment the conditions in each case may require, that said sheep are quarantined within certain limits to be by him fixed and specified, and that such other sheep owners or persons in charge shall not enter within the limits prescribed as quarantined with their flocks of sheep until further notice. Should any flock of sheep free of scabies or any infectious or contagious disease enter or intrude upon any lands and corrals or places embraced within the limits set apart for such quarantine, or upon any land, corral, or place where infected, diseased, or exposed sheep have been, then such sheep or flock of sheep shall be subject to the same regulations and treatment as sheep infected with scabies, or infectious or contagious diseases detrimental to sheep; *provided, however*, that the board shall establish rules and regulations for the quarantining of sheep which, so far as is practicable and reasonable, shall be of general application; *and provided further*, that all regulations established or specified by said inspector, as aforesaid, shall be subject to change or modification by the board.

Where sheep must be dipped in the immediate vicinity of said quarantine and no preparations have been made upon the part of the owner or owners thereof, or the person in charge, to provide suitable dipping works, within fourteen days after the owner or person in charge of said sheep has been notified that said sheep are infected or diseased, the inspector is authorized to prepare such dipping works as may be necessary, at the expense of the owner of said sheep. If the said sheep cannot subsist upon range forage until they have been treated, the inspector shall then provide feed at the owner's expense. All expenses for so doing, including the expenses for treating sheep, shall become and be a lien upon the said sheep until the same is paid; *provided, however*, that no person, company or corporation shall be required to dip a flock of ewes thirty days before lambing, or ewes with lambs under ten days old, but all such ewes or ewes with lambs infected with scabies or any infectious or contagious disease, or that have in any manner been exposed to any such infection or diseases, must be held in quarantine and kept separate from sheep that are free from scabies or any infectious or contagious disease.

It shall be the duty of the inspector to require the owner or owners, or person in charge of such ewes while held in quarantine during the above period of exemption, to spot and hand-dress all sheep in the flock that show scabies or any infectious or contagious disease, with some of the dips or treatment recognized or specified by the board; and the inspector shall have power to enforce spotting or hand-dressing during the periods of exemption above referred to, the same as he has power to enforce dipping at any other period of the year. All sheep which are kept or herded within the limits of the State of Nevada shall, between the fifteenth day of April and the first day of November of each year, be dipped under the supervision of an authorized sheep inspector in one of the dips which have been recommended by the board; the said dip to be specified by the board and to be of a strength sufficient to eradicate scabies, ticks or lice.

The board is hereby authorized and empowered to take charge of and dip, as soon as possible after the first day of November of each year, all sheep kept or herded within the limits of the State of Nevada not previously dipped within the period required by this section and the expenses for so doing shall be paid by the owner of said sheep and the same shall become and be a lien upon such sheep until paid.

The board is hereby authorized and empowered to make such rules and regulations as they deem necessary relative to the administration of this section.

Any person, firm, or corporation, or any servant, agent, or employee thereof, who is the owner or in charge or control of any sheep, who shall wilfully violate any provisions of this section, or disregard any order or direction made by the board or inspector, in accordance therewith, shall be deemed guilty of a misdemeanor and shall be punished as provided in section 26 of this act.

Proclamation by governor, when.

SEC. 12. Whenever the governor of the state shall have good reason to believe that any disease covered by this enactment has become epidemic in a certain locality in any other state or territory, or that conditions exist that render sheep liable to convey disease, or whenever the board shall certify to the governor that conditions exist that render sheep likely to convey disease, the governor shall forthwith, by proclamation, schedule such locality or localities and prohibit the importation from them of any sheep into this state until such time as the said proclamation shall be raised or modified by the governor. Any person, company, or corporation, or any agent, servant, or employee thereof, who after the publication of such proclamation shall knowingly receive in charge any sheep from any of the prohibited districts, or transport, convey, or drive the same within the boundaries of any county of this state, shall be deemed guilty of a misdemeanor, and shall be punished as provided in section 26 of this act; *provided*, that nothing herein contained shall prohibit the transportation of sheep from such district through the state by railroad, provided such sheep are not unloaded within the state.

Unlawful to import diseased sheep.

SEC. 13. It shall be unlawful for any person, company, or corporation, or any agent, servant or employee thereof, to bring into this state any sheep infected with scabies or any infectious or contagious disease, or that have in any manner been exposed to such disease. Any person, company or corporation, or any agent, servant, or employee thereof, violating the provisions of this section, shall be punished as provided in section 26 of this act.

Importer of sheep must notify board.

SEC. 14. Any person, company or corporation, or any agent, servant or employee thereof, intending to bring or cause to be brought from any other state or territory, the District of Columbia, or any foreign country, any sheep or bucks into the State of Nevada in any manner, except by shipping the same through the state by railroad shall, ten days before crossing the state line, notify the board at its office of such proposed action, which notice shall set forth the place and date of entry into the state, the number of sheep or bucks, the brands or marks thereon, the name of the owner or owners thereof, the locality from which said sheep came and through which they have been driven; *provided, however*, that sheep or bucks trailing into the state from adjoining states for immediate interstate shipments, and sheep and bucks grazing along and across the state lines, and sheep shipped from any part of this state to feed-yards in any other part of

the state, when shipment is made by interstate route, shall be governed by the rules and regulations of the board. If any person, company or corporation, or any agent, servant or employee thereof, shall be guilty of a violation of the provisions of this section, the said person, company or corporation, or any agent, servant or employee thereof, shall upon conviction thereof be punished as provided in section 26 of this act.

Imported sheep to be dipped twice.

SEC. 15. All sheep or bucks imported to Nevada from any state, territory, or District of Columbia, or from any foreign country, shall, upon entering the state, irrespective of the time of such entry, be dipped twice under the supervision of an inspector of the board, the first dipping to be performed within ten days after the said sheep or bucks arrive in the state, and within a period of not less than ten days or more than fourteen days after the said first dipping the said sheep or bucks shall again be dipped; and after the said second dipping, if the said sheep or bucks are free of disease, they shall be released and shall thereupon become subject to the laws, rules, and regulations governing other sheep in the state; *provided, however*, that the board may make reasonable rules and regulations, under which sheep and bucks free from disease may enter the state without dipping, or by being dipped only once. The board is hereby authorized to take charge of and dip as soon as possible any sheep and bucks imported into the State of Nevada not previously dipped within the period required by this section, and the expenses for so doing shall be paid by the owner of said sheep or bucks and the same shall become a lien upon such sheep or bucks until paid. Any person, firm, or corporation, or any servant, agent, or employee thereof, who is the owner or in charge or control of any sheep or bucks imported into the State of Nevada, violating the provisions of this section, shall be deemed guilty of a misdemeanor and shall be punished as provided for in section 26 of this act.

Inspector to file vouchers.

SEC. 16. Whenever any inspector files in the office of the state controller proper vouchers, duly approved by the board, setting forth:

1. The name of such inspector;
 2. The kind and nature of service rendered;
 3. The particular locality where the work was done;
 4. The length of time employed;
 5. The number of sheep inspected and the name of the owner or person in charge of such sheep;
 6. The disease or diseases treated, and the length of time of such treatment;
 7. The amount claimed for such services;
- then and in such case, the state controller must draw a warrant in favor of such inspector, payable out of the moneys in the sheep inspection fund.

Sheep in transit not to be unloaded—Exception.

SEC. 17. Any sheep in transit through this state upon any railroad train shall not be unloaded from such train for any purpose except for feeding or water, and shall be held in the feed-yards or in grazing grounds that may be provided by the railroad company carrying the said sheep, and shall not be allowed to leave the same. All expenses of enforcing the provisions of this section shall be paid by the owner or owners of said sheep, and the same shall become a lien upon such sheep until paid. Any person, company, or corporation, or any agent, servant, or employee of such, who shall be guilty of a violation of the provisions of this section, shall, upon conviction thereof, be punished as provided by section 26 of this act.

Diseased sheep moved for treatment, how.

SEC. 18. Any person, company, corporation, or association, or any agent, servant, or employee of such, desiring to move his or their sheep which are not sound, or which are infected with scabies or any infectious or contagious disease, or which have been exposed in any manner to any such infection or disease, shall obtain from the commissioner of the district a traveling permit, but such permit shall only be granted for the purpose of moving said sheep to the nearest practicable place where they may be treated for said infection or disease, and by such routes as such commissioner shall designate. No such sheep shall be moved until such permit shall have been obtained. Any person, company, corporation, or association, or agent, servant, or employee of such, who shall violate the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof be punished as provided in section 26 of this act; *provided*, that the board may, by regulations, authorize the inspector to issue said traveling permits.

Infection must be reported promptly.

SEC. 19. It shall be the duty of every person, company, corporation, or any agent, servant, or employee thereof, owning or having under their control any sheep or flocks of sheep in the State of Nevada which have become infected with scabies, or any infectious or contagious disease, or which have been exposed in any manner to such infection or diseases, to forthwith report such facts, in writing, to the sheep inspector of the district in which the sheep are located, or to the board, and if any person, company, or corporation, or any agent, servant, or employee thereof, shall fail, neglect, omit, or refuse to so report such facts for a period of fifteen days said person shall be deemed guilty of a misdemeanor, and upon conviction thereof be punished as provided in section 26 of this act.

Who deemed owners.

SEC. 20. In any action or proceedings, civil or criminal, arising under this enactment, all persons having an interest in sheep and controlling the same, concerning which such an action or proceeding is had, shall be deemed the owners of such sheep, and shall be liable severally and jointly for a violation of this enactment. Any herder or other person in charge of sheep who shall wilfully refuse to give an inspector information as to the condition of sheep in his charge, or shall wilfully give false information as to the condition of said sheep, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished as provided in section 26 of this act.

Special legal aid, when.

SEC. 21. Whenever the board shall deem it necessary they may employ special attorneys to assist in the prosecution of violations or violators of any of the foregoing sections, and also may employ attorneys for such other purposes as the board may deem necessary, such services to be paid out of any moneys in the sheep inspection fund in the state treasury.

U. S. regulations accepted.

SEC. 22. The board is hereby authorized to accept, on behalf of the state, the rules and regulations prepared by the secretary of agriculture of the United States under and in pursuance of section numbered 3 of an act of Congress, approved May 29, 1884, "An act for the establishment of the bureau of animal industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuropneumonia and other contagious diseases among domestic animals," and to cooperate with the authorities of the United States in the enforcement of

the provisions of said act; *provided, however*, that all action taken by the employees of the United States while acting under the provisions of this chapter as state inspectors of sheep and bucks shall be exercised under the joint supervision of the board and the chief of the bureau of animal industry.

U. S. employees recognized.

SEC. 23. The board is authorized to give its consent that the bureau of animal industry of the United States and its employees shall come within the State of Nevada for the purposes connected with the exportation of diseased sheep, and for the suppression and extirpation of pleuropneumonia and other contagious and infectious diseases among sheep.

Federal authorities may call peace officers.

SEC. 24. All federal authorities authorized as aforesaid, and the various inspectors of this state, shall, subject to the approval of the board, have the power to call upon any constable, sheriff, or other peace officer in any county in this state to assist them in the discharge of their duties in carrying out the provisions of this act, and the act of Congress aforesaid, and it is hereby made the duty of said officers to assist them when so requested, and the said federal inspectors shall have the same power to enforce the laws of this state as the various inspectors of the state when authorized as aforesaid and engaged in the discharge of their official duties; *provided*, that any person, company, or corporation refusing to comply with the orders of such officer or federal inspector shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 26 of this act.

Salaries, expenses and maintenance, how paid.

SEC. 25. The salaries, expenses, and maintenance of the Nevada state sheep commission, not heretofore provided for in this act, shall be paid out of the sheep inspection fund.

Penalties and punishment.

SEC. 26. Any person, company, corporation or association, or any agent, servant or employee of such, who shall violate or disregard any quarantine provision of this act, or any sanitary or quarantine rule, regulation or order of the board, or inspector thereof, or any of the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof be punished by imprisonment in a county jail for a term of not to exceed more than one year, or by fine of not more than one thousand dollars, or both. For the purpose of carrying out the provisions of this act each member of the board, and the secretary of said board, is authorized to subpoena and examine witnesses and to administer oaths for the purpose of soliciting information to be used in enforcing the provisions hereof, and in the furtherance of the quarantine, sanitary and other regulations.

Liens, how foreclosed.

SEC. 27. All liens provided for in this act shall be foreclosed in the manner provided by chapter 60 of the civil practice act; *provided*, that the judgment therein shall also allow reasonable attorneys' fees, to be fixed by the court.

Premises seized, when.

SEC. 28. Whenever it shall be necessary in the enforcement of the provisions of this act for the board, or any of its inspectors, to take charge of any sheep, corral, building or other place, demand therefor shall be made upon the owners or person in charge thereof; in event of refusal of said owner or person in charge of said sheep, corral, building, or place,

said board or any inspector may have said sheep, corral, building or place seized and held by writ of attachment to issue in the same manner provided by the general laws of the State of Nevada; *provided*, that the action shall be brought in the name of the State of Nevada, and no bond on attachment shall be required.

Breaking quarantine defined.

SEC. 29. Breaking quarantine shall mean the taking of any sheep or allowing any sheep quarantined by the board or inspector to go within or without any building, corral, premises or range quarantined by the board or inspector, or the taking any free sheep within any building, corral, premises or range quarantined by the board or inspector.

Repeal of former act.

SEC. 30. An act entitled "An act regulating the sheep industry in the State of Nevada, creating a state board of sheep commissioners, defining their duties, and prescribing their compensation," approved March 26, 1907; all acts amendatory thereof; and all acts or parts of acts in conflict with the provisions of this act, are hereby repealed.

Sheep inspection fund continued.

SEC. 31. The sheep inspection fund, created and existing under and by virtue of an act entitled "An act regulating the sheep industry in the State of Nevada, creating a state board of sheep commissioners, defining their duties and prescribing their compensation, approved March 26, 1907," shall be transferred to the sheep inspection fund, created under and by virtue of the provisions of this act. The state board of sheep commissioners, created under and by virtue of the said act, shall hold office under the provisions of this act until their successors are appointed as herein provided.

BOARD OF STOCK COMMISSIONERS

An Act relating to cattle, horses, and hogs, and regulating such stock, creating a state board of stock commissioners, defining their duties, and matters properly relating thereto.

Approved March 26, 1915, 396

Board created.

SECTION 1. The state board of stock commissioners is hereby created.

How composed—Oath—Bond—Salary—Meetings—Terms.

SEC. 2. The state board of stock commissioners, hereinafter called the board, shall consist of three (3) members, all of whom shall be experienced stockmen, no two of whom shall be from the same county, said members to be appointed by the governor, and to hold office for four years, and until their successors are duly appointed and qualified, except as herein provided. Each of said commissioners, before entering upon the duties of his office, shall take and subscribe to the constitutional oath of office and enter into a bond with at least two sureties in the penal sum of twenty-five hundred dollars (\$2,500), payable to the State of Nevada, and conditioned for the faithful performance of the duties of his office, which bond shall be approved by the governor, and filed in the office of secretary of state. The members of the board shall each receive for their services three hundred dollars (\$300) per annum and actual transportation expenses while in discharge of their duties. Said salary and expenses shall be paid from the state treasury. Each member of said board shall be a qualified elector of the county from which he is chosen, and must reside during his term of office within the state. Said board must hold meetings quarterly, and oftener if requested by any member of the board; *provided*, that upon the

termination of the term of office of the persons now constituting said board, that the governor shall appoint three persons as members of said board, the terms of such appointments and the appointees to serve on said board for the period of two, three, and four years, respectively, as indicated in the appointments; that thereafter the members shall be appointed and serve for a term of four years as herein provided. *As amended, Stats. 1919, 41.*

Officers—Powers and duties.

SEC. 3. Subdivision A. The board shall elect one of its members president, and is empowered to make rules and regulations for governing itself, and for the enforcement of the provisions of this act, and shall have control of all matters pertaining to the cattle, horse, and hog industry. It may, in conjunction with the state quarantine officer, adopt on behalf of the state rules and regulations of the United States bureau of animal industry relating to the control and suppression of disease in said stock, and to cooperate with the officers of said bureau in the enforcement of such rules and regulations. The board is granted and has full authority and power for the inspection, quarantine, and condemnation of cattle, horses and hogs affected with any infectious or contagious diseases, and is authorized and empowered to enter upon any ground or premises of this state for the purpose of enforcing the inspection, quarantine and condemnation laws of this state. The board is authorized to give the state quarantine officer, or his representatives or his agents, duly approved by the board, or any other person or persons, full authority and power for the inspection, quarantine, and condemnation of cattle, horses, or hogs affected with any infectious or contagious disease, and is authorized and empowered to enter upon any ground or premises of this state for the purpose of enforcing the inspection, quarantine and condemnation laws and all the rules, regulations, and orders of this board.

Subdivision B. The board may make, execute, and enforce such rules, regulations, and other measures as it considers necessary for the control and eradication of infectious or contagious diseases of the animals under its jurisdiction which constitute a menace to the health of live stock or human beings within the state; *provided*, said rules, regulations, and other measures shall be approved by the state quarantine officer before becoming effective. Upon recommendation of the state quarantine officer the board may order and have destroyed any animals or animal under its jurisdiction infected with or exposed to any infectious or contagious disease a menace to other stock or human beings.

The board shall, out of the funds at its disposal, compensate the owner or owners of any stock so destroyed either separately or jointly with any county or municipality of the state or the bureau of animal industry of the United States department of agriculture, the amount of such compensation to be determined by appraisal before the affected stock is destroyed, this appraisal to be made by the state quarantine officer or a properly qualified agent designated by him and the owner or owners or their authorized representative. In the event of their failure to arrive at an agreement, the two so selected shall designate some disinterested party, who by reason of experience in such matters is a qualified judge of livestock values, to act with them. The judgment of any two of these appraisers shall be binding and final upon all parties; *provided*, that the total amount received by the owner or owners of stock so destroyed, including compensation paid by the board, any county or municipality or the bureau of animal industry of the United States department of agriculture, or any livestock insurance company, the salvage received from the sale of hides or carcasses or any other source, combined, shall not exceed 75 per cent of the actual appraised

value of the destroyed stock, due allowance being made in such appraisement for their reduced value, owing to disease; *provided further*, that any individual or corporation purchasing any live stock which was at the time of purchase under quarantine by any state, county or municipal authorities or the bureau of animal industry of the United States department of agriculture legally empowered to lay such quarantine, or who purchases any which due diligence and caution would have shown to be diseased or which have been shipped or transported in violation of the rules and regulations of the bureau of animal industry of the United States department of agriculture, or the State of Nevada, shall not be entitled to compensation and the board may order their destruction without making any compensation to the owner; *and provided further*, no payment shall be made hereunder as compensation for or on account of any such animal destroyed if at the time of inspection or test of such animal or at the time of the ordered destruction thereof, it shall belong to or be upon the premises of any person, firm, or corporation to which it has been sold, shipped, or delivered for the purpose of being slaughtered; *and provided further*, that in no case shall any payment hereunder be more than \$75 for any grade animal or more than \$200 for any pure-bred animal, and no payment shall be made unless the owner has complied with all quarantine rules and regulations of the board.

Subdivision C. The board shall have power to order the state quarantine officer to have inspected or quarantined any stock in the state infected with, suspected of being or which have been exposed to a contagious or infectious disease a menace to human beings or other live stock, compel treatment at such times and as often as he deems necessary to insure the suppression of disease. The board may divide the state into such districts as may be necessary for the enforcement of this act. The state quarantine officer shall, upon direction of the board, quarantine and compel the cleaning and disinfection of any corrals or place where stock is handled, and when owners or persons in charge of such corrals fail or refuse to clean and disinfect such places or corrals the board shall have the power to clean and disinfect them, the expense of which shall be paid by the owner or person in charge, and shall be a lien on such place or corral until the expense is paid. All general orders, rules, or regulations made as herein provided and applying to the entire state, a county or a district, must be published at least twice in some newspaper having general circulation in the county or district affected by the order, which shall constitute a legal notice of the order made upon all stockmen owning or having in charge cattle, horses, or hogs.

Subdivision D. The board shall maintain an office at some point within this state to be determined by the board. The cost of maintenance of such office shall be paid from the state treasury in the same manner as the salaries and expenses of state officers are paid.

Subdivision E. The board may appoint an executive officer to exercise and enforce all rules and regulations of the board and the provisions of this act when the board is not in session; *provided*, said executive officer, when an emergency demands and the board is not in session, may exercise all the powers and functions of the board. Such executive officer shall be one of the members of the board or the state quarantine officer.

Subdivision F. The board shall fix the rate of tax to be levied, as provided for in section four of this act, at any regular or special meeting of the board, and shall send notice of the same to the county commissioners of the several counties of the state on or before the first day of March of each year. The board shall audit all bills of salaries and expenses incurred in the enforcement of this act that may be payable from the stock inspection fund, and, if found correct, shall certify the same to the state

controller, who shall draw a warrant on the state treasury in favor of the parties entitled thereto. The board shall make a report in writing to the governor on or before the 15th day of January, biennially, giving a statement of the transactions of the board, the facts relating to the condition of the stock industry of this state, and the state printer shall print said report for distribution by the board the same as similar reports, and without charge. *As amended, Stats. 1919, 42.*

Tax for stock inspection fund.

SEC. 4. The board of county commissioners, at the time of the annual levy of taxes, must, at the request of the board, levy the rate of tax recommended by the board, not to exceed six (6) mills on the dollar per annum, on all cattle, horses, and hogs assessed in their respective counties, according to the assessed valuation of the same, the said tax to be collected as other taxes, and paid to the state treasurer, who must keep the same in a separate fund to be known as the stock inspection fund.

The board may invest any surplus or reserve money in said fund in United States, state, or county bonds of Nevada, such bonds to bear interest at a rate of not less than four per cent (4%) per annum; the state treasurer may, with the approval of the state board of examiners, deposit all reserve funds not so invested with banking corporations of the State of Nevada, upon the filing of approved securities, at a rate of interest of not less than three per cent (3%) per annum. All revenue derived from interest on such funds and bonds to be collected by the state treasurer and deposited in the stock inspection fund account. *As amended, Stats. 1919, 45.*

Duties of county officers.

SEC. 5. The county assessor must, on or before the first Monday in September of each year, prepare from the assessment book of such year, as corrected by the board of county commissioners, a statement showing the total number of all said stock assessed, and the value of same. And the county treasurer must notify the state board of stock commissioners of all moneys forwarded to the state treasury belonging to the state stock inspection fund at the time said moneys are forwarded to the state treasury. Also make final report to said board at the time he makes settlement with the state controller.

Board to enforce act—Stock inspectors—Inspection record.

SEC. 6. The board shall have charge of the enforcement of the provisions of this act, and of the rules and regulations made as herein provided. The board shall appoint such inspectors as may be necessary, and said inspectors, before entering upon the duties of their office, shall file a bond in the sum of one thousand dollars (\$1,000), payable to the state, for the faithful performance of their duties, with and to be approved by the board. Such inspectors shall be paid from the stock inspection fund. The board and each inspector must keep a book, to be known as the inspection record, in which they must enter their official acts. Such record must show the name of the owner of all horses, cattle, and hogs inspected, and the time when and place where the same were inspected. Inspectors shall have the right at all times to enter any premises, farms, fields, pens, slaughter-houses, buildings, or cars, where any of said stock are quartered, for the purpose of examining them, in order to determine whether they are affected with any infectious or contagious disease. All inspectors and their deputies shall have the same powers and authority of peace officers. The board shall have the power to order an inspector to quarantine any corral, pens, slaughter-houses, buildings and cars where stock may have been handled, and compel the cleaning and disinfecting of the same when deemed necessary for the purposes of this act. Where owners or persons in charge of

such places refuse to clean and disinfect them, the inspector shall have the right to take charge of such places, and cause the same to be cleaned and disinfected, the expense of which must be paid by the owner or person in charge, and shall be a lien upon such premises, corrals, pens, slaughter-houses, buildings, cars, etc., until such expense is paid.

Bounties for killing certain animals.

SEC. 6A. The board is authorized and empowered to offer and pay bounties out of its funds for the killing and destruction of the following-named animals, killed in the State of Nevada, to wit: For each coyote or coyote pup, seventy-five (75c) cents, for each wildcat or lynx, seventy-five (75c) cents, and for each mountain lion, five (\$5) dollars. Any person killing any of the aforesaid animals in order to obtain the bounty provided for herein, shall within ninety (90) days of the date of the killing, present or cause to be presented by his duly authorized agent, to the county clerk of the county in which said animal or animals have been killed, the entire skin of each of said animal or animals, which skin includes and must have attached thereto all four of the paws, or feet, the tail and the skin of the head, eye-holes and skin to tip of nose; and shall at the same time make and file with the said county clerk an affidavit, which said affidavit shall state: First, the kind of animal or animals from which said skin or skins were taken and the number of skins presented; second, that the county in which said animal or animals were killed is the county in which their skins are presented for payment of a bounty; third, that said animal or animals from which said skins were taken were not bought or received dead or alive, from any other county or state; fourth, that said animals were killed within ninety (90) days from the date of making of said affidavit; fifth, that said animal or animals were killed in such county and in the State of Nevada; and, sixth, that the same were not fostered or whelped in captivity prior to the killing thereof. The said county clerk may, if he deems it advisable, require of such applicant for bounty such other corroborative testimony as to him seems proper concerning the truth set forth in such affidavit; *provided*, that when in doubt as to the kind of skin or skins presented, the order shall be issued for the lesser bounty. The county clerk shall cut off the four (4) paws or feet at the knee and destroy them. The said county clerk shall then certify to the said board that he received the said hides, that the required affidavit or affidavits have been made, and that he has destroyed the fore feet, in conformity with law, and also certify the name of the animals killed, the number, where killed and by whom and the bounty due. The board shall forthwith remit the bounty due to the party presenting the same and at the same time notify the said county clerk of the forwarding of said bounty so paid.

Inspectors must report.

SEC. 7. Inspectors shall report to the board in writing as often and at such times as may be requested by said board.

Bill of health by inspector, when—"Stock" defined.

SEC. 8. Each inspector must inspect all the horses, cattle, and hogs, within the district assigned to him, when so ordered by the board, and must make and issue certificate or bill of health for all of said stock whose owners have complied with the law and the orders, rules, and regulations made and adopted by the board describing the stock with the marks and brands thereon, which shall entitle the owner or agent in charge to pass with such stock from one district to another in the state. The inspector shall immediately file with the board a duplicate of all certificates issued by him. The term "stock" shall include horses, cattle, and hogs.

Board must be notified of disease.

SEC. 9. Whenever any stock shall become infected with any infectious or contagious disease, the owner or agent in charge, the inspector appointed as herein provided, or any practicing veterinary, must immediately notify the board and the state quarantine officer.

Quarantine regulations.

SEC. 10. When stock is found diseased, regulation for their quarantine must be made at once by the state quarantine officer, upon notification by the inspector of the district where such stock is found, who must define the place and limits within which such stock may be grazed, herded, or driven, and such stock must be held in quarantine until pronounced cured from disease by the state quarantine officer. The expense of treating, feeding, and taking care of all stock quarantined under the provisions of this act must be paid for by the owner or agent in charge of such stock; and such expense shall be a lien upon such stock until paid.

Stock vaccinated on order of board.

SEC. 11. All stock must be vaccinated when necessary at such time as may be ordered by the board. Any person, firm, company or corporation refusing to comply with and observe the provisions of this act or the orders, rules and regulations of said stock board shall be guilty of a misdemeanor, and liable to the fines and punishment hereinafter provided.

Entry of foreign stock—Board must be notified.

SEC. 12. When any owner or person in charge of stock shall bring such stock into this state, before entering from an adjoining state or territory, for the purpose of grazing, or feeding, they shall notify the board and state quarantine officer, in writing, of such fact immediately before entering the state, stating the time when and the place where such stock shall enter; *provided, however*, that stock in transit on the cars shall not be required to give notice unless they shall remain in the state, or are unloading to feed and rest for a longer period than forty-eight hours.

Infected stock not to be moved.

SEC. 13. In no case shall any stock suffering from contagious or infectious diseases be removed from one point to another within any district, or from one district to another without a written permit from the board and state quarantine officer.

Secretary of board.

SEC. 14. The said board shall appoint a secretary, prescribe his duties, and fix his salary at a sum not to exceed eight hundred (\$800) dollars the year, payable as the salaries of other state officers are paid. Said secretary to hold his position during the pleasure of the board.

SEC. 15. [Stats. 1915, 401, repealed, Stats. 1919, 45.]

Appropriation to be repaid.

SEC. 16. That the sum of ten thousand dollars is hereby appropriated, out of any moneys not otherwise appropriated, from the general fund, for the purpose of carrying this act into effect. All moneys so appropriated to be returned into the general fund from such taxes as may be levied upon the stock as herein provided.

Penalty for violation.

SEC. 17. Any person who violates any provision of this act, or who disregards any order or direction made by the board or inspectors in accordance therewith, shall be deemed guilty of a misdemeanor, and shall

be punished by a fine not exceeding three hundred dollars (\$300), or by imprisonment not exceeding six months, or by both such fine and imprisonment.

Board to cooperate.

SEC. 18. The state board of stock commissioners shall act in conjunction with the state veterinary control service of the University of Nevada in the general enforcement of rules and regulations looking to the diagnosis, control, eradication, and prevention of infectious, contagious or communicable diseases of domesticated animals, as included in this act. In so far as the duty imposed by the board of stock commissioners requires a regulation of interstate and intrastate movement of domesticated animals infected with, or which have been exposed to, infectious, contagious, or communicable diseases, the board shall act in conjunction with the state veterinary control service department of the University of Nevada; and the laboratory of the said state veterinary control service department of the University of Nevada shall be at the service of the said state board of stock commissioners, to render such scientific assistance as it can, in order to accomplish the purposes contemplated in this act. Whenever any of the employees in the department of the state veterinary control service of the University of Nevada are employed upon duty required of them by the said state board of stock commissioners, they shall be paid, from the stock inspection fund, for their services, pro rata as to the time which has been spent in this service, and at a rate which shall compensate them on the same basis of salary or wages paid to them regularly by the board of regents of the University of Nevada.

May prosecute thieves and offer rewards.

SEC. 19. The board may take all necessary and lawful steps, procure all necessary and lawful process for the attendance of witnesses, and employ counsel to assist in the prosecution of any person charged with stealing cattle, horses, or hogs for violating the laws of the state for the protection of the rights and interests of owners of live stock, under the jurisdiction of this board, and also to advise and assist in the administration of this act, the cost and compensation thereof to be paid out of the funds of the commission. The board may also offer a standing reward or a reward for each class of stock included under this act, of not to exceed \$500, for information leading to the arrest and conviction of each person engaged in stealing cattle, horses, or hogs, the reward to be paid to the person or persons giving the information leading to the arrest and conviction of such person or persons immediately upon the conviction of and imprisonment in the state prison of the person or persons so arrested. The board shall make such further conditions and rules in connection with offering said rewards and the payments thereof as it may deem proper. *As amended, Stats. 1919, 45.*

"Horse" defined.

SEC. 19½. The word "horse" or "horses," wherever used or employed in this act, shall mean and be construed to mean and include mules, jackasses, jennets, and what are usually called horses. *Added, Stats. 1919, 45.*

Board to appoint inspectors and detectives.

SEC. 20. The state board of stock commissioners may appoint such stock inspectors and detectives as are necessary for the protection of the live-stock interests of the state, and the inspectors and detectives have the same power as sheriffs to summon a posse when necessary, and to make arrests. The stock inspectors and detectives may, when deputized by the sheriff,

exercise the powers of deputy sheriff, but must not receive any fee or emolument therefor from the state or any county.

Duties of inspectors and detectives.

SEC. 21. It is the duty of the stock inspectors and detectives to arrest all persons who in their presence violate the stock laws of the state, and every stock inspector and detective, upon information that any person has committed any offense against the laws of the state in feloniously branding or stealing any stock or any offense against the laws of the state, for the protection of the rights and interests of stock owners, must make the necessary affidavit for the arrest and examination of such person, and, upon warrant issued therefor, immediately arrest such person, and bring him before the proper officer, and notify the board of his acts. Said inspectors shall also inspect all stock or cattle about to be shipped from the state, and the consignor, upon demand, shall establish fully his title to such stock.

Each section of act independent.

SEC. 22. Each section of this act and every part of each section is hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to affect nor shall it affect any other section or any part thereof. *Added, Stats. 1919, 46.*

TAX COMMISSION

An Act in relation to public revenues, creating the Nevada tax commission and the state board of equalization, defining their powers and duties, and matters relating thereto, and repealing all acts and parts of acts in conflict herewith.

Approved March 23, 1917, 328

Commission created—How composed—Secretary.

SECTION 1. There is hereby created a commission to be designated and known as the Nevada tax commission. Said Nevada tax commission shall consist of a chairman and six commissioners. The chairman shall be the governor of the State of Nevada. One of the commissioners shall be the appointive member of the public service commission who devotes all his time to the business of the State of Nevada; one of the said commissioners shall be versed in and possess a practical knowledge and experience in the classification of land and the value thereof; one of the said commissioners shall be versed in and possess a practical knowledge and experience in live stock and the value thereof; one of said commissioners shall be versed in and possess a practical knowledge and experience in the mining industry; one of the said commissioners shall be versed in and possess a practical knowledge and experience in business; one of said commissioners shall be versed in and possess a practical knowledge and experience in banking; each of said commissioners at the time of his appointment shall be actively engaged in the business of the department which he is chosen to represent on the commission. Said appointments shall be made by the governor, and not more than one of said commissioners shall be appointed from any one county in this state, and not more than a majority of the said commission shall be of the same political party. Three of said commissioners shall be appointed for a term of four years, and two of said commissioners for a term of two years, and upon the expiration of the terms for which the appointments are made all commissioners shall be appointed for terms of four years. The chairman and each of said commissioners shall have a vote upon all matters which

shall come before said commission. Before entering upon his duties each of said commissioners, except the governor and the public service commissioner, shall enter into a bond payable to the State of Nevada, to be approved by the board of examiners, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties, and shall subscribe to the official oath. The commission shall appoint a secretary who shall give his entire time and attention to the duties of the office of secretary of the commission, and who shall be in charge of the office of the commission.

Powers.

SEC. 2. The members of said commission shall have power to prescribe rules and regulations for its own government and governing the procedure and order of business of all regular and special sessions, and five members shall constitute a quorum for the transaction of business. The secretary shall keep full and correct records of all transactions and proceedings of said commission, and perform such other duties as may be required, and, with the approval and consent of the commission and of the state board of examiners, may employ such clerical or expert assistance as may be required.

Powers specified.

SEC. 3. Said Nevada tax commission, hereinafter and heretofore referred to as "said commission," is hereby empowered:

First—To confer with, advise and direct assessors, sheriffs, as ex officio collectors of licenses, county boards of equalization, and all other county officers having to do with the preparation of the assessment roll or collection of taxes or other revenues as to their duties; to direct what proceeding, actions or prosecutions shall be instituted to support the law. Said commission may call upon the district attorney of any county or the attorney-general to institute and conduct such civil or criminal proceedings as may be demanded.

Second—To have the original power of appraisement or assessment of all property mentioned in section 5 of this act.

Third—To establish and prescribe the general and uniform rules and regulations governing the assessment of property by the assessors of the various counties, not in conflict with law; to prescribe the form and manner in which assessment rolls or tax lists shall be kept by assessors (and county commissioners shall supply books and blanks for the use of the assessors in such form), and also to prescribe the form of the statements of property owners in making returns of their property; and it is hereby made the duty of all county assessors to adopt and put in practice such rules and regulations and to use and adopt such form and manner of keeping such assessment rolls or tax lists, and to use and require such property owners to use, and the county commissioners shall furnish, the blank statements required by said commission in making their property returns.

Fourth—To require assessors, sheriffs, as ex officio collectors of licenses, and the clerks of the county boards of equalization, and all other county officers having to do with the preparation of the assessment roll or collection of taxes or other revenues, to furnish such information in relation to assessments, licenses, or the equalization of property valuations, and in such form as said commission may demand.

Fifth—To summon witnesses to appear and testify on any subject material to the determination of property valuations, licenses, or the net proceeds of mines, but no property owner and no officer, director, superintendent, manager, or agent of any company or corporation, whose property is wholly in one county, shall be required to appear, without his consent, at a place other than the county-seat or at the nearest town to his place of

residence, or the principal place of business of such company or corporation. Such summons may be served by personal service by any member of said commission, or by the sheriff of the county, and who shall certify to said service without compensation therefor. Any member of said commission may administer oaths to witnesses.

Sixth—To make diligent investigation with reference to any class or kind of property believed to be escaping just taxation; and in pursuance whereof, said commission, or any commissioner thereof, may examine the books and accounts of any person, copartnership, or corporation doing business in the state, when such examination is deemed necessary to a proper determination of the valuation of any property subject to taxation, or the determination of any licenses for the conduct of any business, or the determination of the net proceeds of any mine.

Seventh—To require boards of county commissioners to submit a budget estimate of the county expenses for the current year in such detail and form as may be required by the commission; to require boards of county commissioners to increase or decrease the county tax rate of their respective counties to produce the net revenue estimated as necessary for the conduct of such county government, as appears from such budget; to require county boards of education and district school trustees and all school officers having control over any school expenditures in any district in which a special tax is to be levied during the current year, to submit a budget estimate of the expenses for which such tax is levied in such detail and form as may be required by the commission. To require cities, municipalities and towns and the governing boards thereof to submit budget estimates of the expenses for the government of such city, municipality or town for the current year, in such form and detail as may be required by the commission, and to require the governing boards of any municipality, city or town to increase or decrease the tax rate therein to produce the net revenue estimates for the conduct of such municipality, city or town in said budget.

Eighth—The commission shall have, in addition to the specific powers enumerated, the power to exercise general supervision and control over the entire revenue system of the state.

Ninth—The commission shall have the power to require county assessors, county boards of equalization, any county auditor or county treasurer to place upon the roll any property found to be escaping taxation.

Tenth—The commission shall have the power to authorize the secretary to hold hearings or make investigations, and upon any such hearing the secretary shall have the authority to examine books, compel the attendance of witnesses, administer oaths and conduct investigations.

The enumeration of the foregoing powers shall not be considered as excluding the exercise of any needful and proper power and authority of said commission.

Office at Carson City—Sessions—What legal notice.

SEC. 4. Said commission shall keep its office at Carson City, and shall be in general session and open for the transaction of business the usual hours and days in which public offices are kept open. There shall annually be held at Carson City two regular sessions of said commission, namely, one beginning on the second Monday in January of each year at 9 o'clock a. m., and continuing from day to day until the business is completed, at which valuations shall be established by said commission on the several kinds and classes of property mentioned in section 5 of this act; and one regular session shall be held annually beginning on the first day of October, or the first legal day thereafter, at the same hour, and continuing from day to day until the business is completed, at which said commission

shall equalize property valuations in the state as provided in section 7 of this act, exclusive of live stock. The publication in the statutes of the foregoing time, place, and purposes of such regular session shall be deemed sufficient notice thereof to all concerned, but said commission, if it so elects, may cause published notices of such regular sessions to be made in the press, or may notify parties in interest by letter or otherwise. All sessions shall be public and all parties shall have the right to appear, to be heard in person or by their agents or attorneys, or to submit evidence in documentary form. The publication once a week, for two consecutive weeks, of notice of a special session, in some newspaper of general circulation in the county in which such special session is to be held, five days' personal service on, or registered mailed notice to, the person, firm, or corporation affected, stating the time, place, objects and purposes of such special session, shall be deemed sufficient notice thereof to all concerned. Special sessions may be held at such times and places and for such purposes as said commission may declare.

Assess live stock, railroads, franchises, etc.

SEC. 5. At the regular session of said commission held on the second Monday of January of each year, said commission shall assess all live stock throughout the state, accepting the valuation per head for the year 1917, using the valuation theretofore established by the state board of equalization at its regular session held in August, 1916, and thereafter using the valuation per head established by the preceding session of the state board of equalization for the then current year, as provided for in section 6 of this act, and shall establish the valuation on any property of an interstate or intercounty nature, and which shall in any event include: The property of all interstate or intercounty railroads, sleeping-car, private car line, street railway, traction, telegraph, water, telephone, and electric light and power companies, together with the franchises, and the property and franchises of all express companies operating on any common carrier in this state, and which foregoing, exclusive of live stock, shall be assessed as follows: Said commission shall establish and fix the valuation of the franchise, and all physical property used directly in the operation of any such business of any such company in this state, as a collective unit; and if operating in more than one county, on establishing such unit valuation for the collective property, said commission shall then proceed to determine the total aggregate mileage operated within the state and within the several counties thereof, and so apportion the same upon a mile-unit valuation basis, and the number of miles so apportioned to any county shall be subject to assessment in that county according to the mile-unit valuation so established by said commission. The word "company" shall be construed to mean and include any person or persons, company, corporation, or association engaged in the business described. In case of the omission by said commission to establish a valuation for assessment purposes upon any property mentioned in this section, it shall be the duty of the assessors of any counties wherein such property is situated to assess the same. All other property shall be assessed by the county assessors. On or before the first Monday in June it shall be the duty of the said commission to transmit to the several assessors the assessed valuation found by it on such classes of property as are enumerated in this section, together with the apportionment of each county of such assessment. The several county assessors shall enter on the roll all such assessments transmitted to them by the Nevada tax commission.

State board of equalization.

SEC. 6. Beginning on the third Monday of August the said commission shall, together with the county assessors of the several counties of this

state, sit in Carson City as a state board of equalization. The chairman of the said commission shall be the chairman of the said board of equalization, and each member of said commission and each of the county assessors shall have a vote upon said board. The secretary of the Nevada tax commission shall act as the secretary of the state board of equalization. The actual necessary expenses of the county assessors in attending the meeting of the said board of equalization shall be paid by the respective counties. At such meeting it shall be the duty of the state board of equalization to review the tax rolls of the various counties as corrected by county boards of equalization, and to raise or lower for the purpose of state equalization the valuations therein established by county assessors and county boards of equalization, on any class or piece of property in whole or in part in any county save and except those classes of property enumerated in section 5 of this act, exclusive of live stock, which shall be equalized by the said state board; and in equalizing the assessment of said property it shall be the duty of said state board of equalization to so raise or lower such valuation as to produce an aggregate assessment of all property within the state (including the property enumerated in section 5 of this act) sufficient when the state tax levy is applied thereto to produce the revenues required from taxation as shown in the budget of estimated state expenses provided for in section 8 of this act; *provided, however*, that if said state board of equalization shall fail to perform the duties enumerated in this section, the Nevada tax commission may make such equalization as will be necessary. Said board of equalization shall complete their labors on or before the thirtieth day of September, and any person whose assessment valuation has been raised by said state board of equalization may complain to the Nevada tax commission on or before the third Monday in October in said year, and said tax commission may correct or remedy any inequality or error so complained of. Showing on complaint may be made by letter or in person, and said commission may, in its discretion, require affidavits in support thereof. If any county assessor shall be unable to attend the meeting of the state board of equalization, the board of county commissioners may appoint a qualified person to act in his stead. At the meeting of the state board of equalization, as provided for in this section, in the year 1917, and annually thereafter, said state board of equalization shall fix the valuation for assessment purposes per head of all live stock in the state; and such valuation, however, shall be subject to equalization.

May regulate valuations, except live stock.

SEC. 7. At the regular session commencing on the first day of October, the Nevada tax commission for the purpose of state equalization may raise or lower any valuations theretofore established by it upon any class or piece of property, exclusive of live stock, enumerated in section 5 of this act, to conform with the equalization of assessments effected by the state board of equalization.

Plaintiff's assessment was so raised in 1914 that payment of the December installment would result in payment of a sum in excess of the taxes payable under the prior valuation; the taxes being payable in two equal installments. Held, that this section would not afford plaintiff an adequate remedy at law, and so plaintiff might, being a foreign corporation, sue in the federal courts to enjoin the collection of the illegal assessments. *Nevada-California Power Co. v. Hamilton*, 235 F. 319, 335-337.

State budget required.

SEC. 8. It shall be the duty of the state board of examiners, on or before the first Monday in May of each year, to prepare and file with the Nevada tax commission a detailed budget estimate of the aggregate amount of

money necessary to be raised by taxation, and from other sources of revenue, to maintain the government of the state upon a cash basis.

Secretary to certify charges.

SEC. 9. The secretary of the Nevada tax commission shall certify any change in the assessed valuation of any piece or class of property in whole or in part made by the tax commission or the state board of equalization to the auditor of the county wherein such property is assessed and said auditor shall make such changes in the assessment roll prior to the delivery of his completed tax roll to the ex officio tax receiver.

Taxpayers not deprived of legal redress.

SEC. 10. No taxpayer shall be deprived of any remedy or redress in a court of law relating to the payment of taxes, but all actions at law shall be for redress from the findings of said commission or the state board of equalization, and may not be instituted upon the act of an assessor, or of a county board of equalization or the state board of equalization until said commission has denied the complainant redress. Said Nevada tax commission, in that name, may sue and be sued, and shall be so named as defendant in any action at law brought under the provisions of this section, and the attorney-general shall defend the same, but the burden of proof shall be upon the complainant to show by clear and satisfactory evidence that any valuation established or equalized by said commission or the state board of equalization is unjust and inequitable.

Method of paying taxes if proceedings instituted.

SEC. 11. (a) Any property owner whose taxes exceed the sum of \$300, who has instituted a court proceeding for redress from any increased valuation of his property for assessment purposes, and who shall have paid his December installment of taxes thereon in full, may, on filing with the treasurer of the county a certificate of the clerk of any court that such issue is pending, pay his June installment in two separate payments, to wit: One payment in a sum which, when added to the December installment, shall represent the amount of taxes payable if computed on the valuation of the preceding tax year plus the taxes on any improvements added since such preceding levy; and the other for the balance required to make up the full June installment; and said county treasurer shall receipt for the latter as a special deposit to be held by such treasurer undisbursed until the court, by its finding, shall award it; and said property in such case shall not be liable for any penalty under the delinquent tax act; and if the court, by its findings, reduces the assessment of such property, said county treasurer, on order of the court, shall refund from such special deposit an amount corresponding to such reduction; and if the court shall not reduce the valuation of said property, then said county treasurer shall transfer the entire special deposit to the public revenues.

(b) Any property owner whose taxes are less than \$300, and who has paid his December installment of taxes in full, may, on filing with the treasurer of the county a certificate of the secretary of the Nevada tax commission that he has made complaint or applied to said commission for redress from any increased valuation of his property, pay his June installment in two separate payments, one payment in the sum which, when added to the December installment, shall represent the amount of taxes payable if computed on the valuation of the preceding tax year plus the taxes on any improvements added since such preceding levy, and the other for the balance required to make up the full June installment; and the county treasurer shall receipt for the latter as a special deposit, to be held by such treasurer undisbursed until the Nevada tax commission shall, by its findings, grant or refuse redress from such increased valuation, and said property owner, in such case, shall not be liable for any penalty

under the delinquent tax act; and if the Nevada tax commission, by its findings, reduces the assessment valuation of such property, said county treasurer, on order of said commission, shall refund from such special deposit an amount corresponding to such reduction, and shall transfer the remainder to the public revenues; and if said commission shall not reduce the valuation of said property, then said county treasurer shall transfer the entire special deposit to the public revenues. Nothing in this section shall be deemed to deprive any taxpayer of any right or remedy he may now have or be entitled to under the laws of Nevada.

(c) Any property owner, whose taxes exceed the sum of \$300, and the first installment of which is in excess of the amount which he claims to be justly due for taxes, may pay his installment of taxes as they become due under protest, and may commence a suit against the state and county in which the same was paid for the difference between the amount of the taxes paid and the amount which he claims to be due. In an action by or against the person assessed he may complain or defend upon the following grounds:

(1) That the taxes have been paid before the suit; or
(2) That the property is exempt from taxation under the provisions of the revenue or tax laws of the state, specifying in detail the claim of exemption; or

(3) That the person assessed was not the owner and had no right, title or interest in the property assessed at the time of assessment;

(4) That the property is situate in and has been duly assessed in another county and the taxes thereon paid; or

(5) Fraud in the assessment or that the assessment is out of proportion to and above the actual cash value of the property assessed; or the assessment is out of proportion to and above the percentage of valuation fixed by the Nevada tax commission for the year in which the taxes were levied and the property assessed; *provided, however*, that in all cases mentioned in this paragraph where the complaint is based upon any grounds mentioned herein, the entire assessment shall not be declared void, but shall only be void as to the excess in valuation; *provided further*, that in every action brought under the provisions of this section the burden of proof shall be upon the plaintiff to show by clear and satisfactory evidence that any valuation established or equalized by the Nevada tax commission, or the state board of equalization, or the county assessor, or the county board of equalization, is unjust and inequitable.

Every action commenced under and by virtue of the provisions of this section shall be commenced within three months from the date of the payment of the last installment of taxes, and if not so commenced shall be forever barred.

Nothing in this section or in any remedy granted hereby shall prevent the distribution or apportionment of the taxes so paid into the various funds of the state and county, but in the event of judgment in favor of the plaintiff the amount of said judgment shall be paid out of the general funds of the state and county by defendants as their liability may appear. The county treasurer or tax receiver in making settlement with the state shall notify the state controller of the amount of state tax moneys which were paid under protest, and an amount equivalent thereto shall be thereby deemed to be and is hereby appropriated for the purpose of paying any judgment recovered against the state in an action under the provisions of this section.

Assessment at full cash value.

SEC. 12. All property subject to taxation shall be assessed at its full cash value.

Proceeds of mines assessed.

SEC. 13. In pursuance of the general supervision and control over the revenue system of the state, said commission is hereby empowered to investigate and determine the net proceeds of all operating mines. In pursuance whereof, said commission, in each instance, shall investigate and determine from all obtainable data, evidence, and reports, the gross value of the bullion actually extracted from the reduction of the ores and the proceeds from the sale of the ores of any mine, mining claim, or patented mine, and to deduct therefrom only such actual costs of extraction, transportation, reduction, or sale of ores, as shall be deemed by said commission to be just, proper, and reasonable, and not introduced to deprive or defraud the state of any portion of its just revenue; and in any suit at law arising under the provisions of this section, the burden of proof shall be upon the owner of such mine, mining claim, or patented mine, to establish that any item of cost disallowed by said commission is, nevertheless, just, proper, and reasonable, and not entered to defraud the state.

Provisions of act mandatory—Penalty for refusal.

SEC. 14. All the provisions of this act with respect to county assessors, sheriffs, as ex officio collectors of licenses, county commissioners, county auditors, and all other county officers having to do with the preparation of the assessment roll or collection of taxes or other revenues, and persons summoned as witnesses, the requirement of witnesses to testify, the examination of the books and accounts of persons, copartnerships, and corporations doing business in this state, are mandatory; and any such county officer, or witness summoned, or witness required to testify, or person, copartner, or officer, director, superintendent, or manager, or agent of any corporation, who neglects, fails or refuses to comply with such mandates shall, for the first offense, be deemed guilty of a misdemeanor, and subject to the penalty prescribed in section 6285, Revised Laws of Nevada; and for persistence therein, constituting a second offense, shall be deemed guilty of a gross misdemeanor, and subject to the penalty prescribed in section 6284 of said Revised Laws. Any person who shall testify falsely shall be guilty of and punished for perjury.

Informalities not to invalidate.

SEC. 15. All acts herein required between the assessment and the collection of the taxes or commencement of suit shall be directory merely; and no assessment, or act relating to assessment, or collection of taxes shall be illegal on account of informality, nor because the same was not completed within the time required by law.

Salaries.

SEC. 16. The governor and the members of the public service commission shall receive no compensation for their services as members of the Nevada tax commission. The secretary shall receive a salary of three thousand dollars per annum, payable in equal monthly installments as other state officers are paid. Each of the other five commissioners mentioned in section 1 of this act shall receive a salary of six hundred dollars (\$600) per annum, payable in equal monthly installments as other state officers are paid.

Actual expenses allowed.

SEC. 17. The members of the said commission, and such expert assistants as may be employed, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of said commission.

SEC. 18. [Carrying appropriation; omitted.]

Annual report.

SEC. 19. The commission shall make and publish an annual report for each calendar year, showing its transactions and proceedings for the year.

Printing at state printing office.

SEC. 20. All forms, blanks, envelopes, letterheads, circulars, and reports required to be printed by said commission shall be printed at the state printing office under the general provisions of the act entitled "An act to designate and authorize the work to be done in the state printing office," approved March 5, 1909.

Meetings continuations of old commission.

SEC. 21. All meetings of the commission of the Nevada tax commission created under and by virtue of this act shall be deemed and shall be continuations of such meetings as are now being held or authorized by the Nevada tax commission created under and by virtue of "An act in relation to the public revenues, creating the Nevada tax commission and the state board of equalization, defining their powers and duties, and matters relating thereto, and repealing all acts and parts of acts in conflict therewith," approved March 17, 1915.

COMMISSIONERS ON UNIFORM LEGISLATION

An Act to establish a board of commissioners for the promotion of uniformity of legislation in the United States, and other matters relating thereto.

Approved February 27, 1915, 61

Commission created.

SECTION 1. That within thirty days after the approval of this act, the governor shall appoint three suitable persons, and they and their successors are hereby constituted a board of commissioners for the promotion of uniformity of legislation in the United States. Said commissioners shall hold their office for a term of three years, and until their successors are appointed. Any vacancy in said board shall be filled by appointment by the governor.

Duty.

SEC. 2. That it shall be the duty of said board to examine the subjects upon which uniformity of legislation in the various states of the union is desirable, but which are outside the jurisdiction of the Congress of the United States; to confer upon these matters with the commissioners appointed by the other states for the same purpose; to consider and draft uniform laws to be submitted for approval and adoption by the several states, and to generally devise and recommend such other or further course of action as shall accomplish the purposes of this act.

To keep record and report.

SEC. 3. That the said board of commissioners shall keep a record of all its transactions, and shall at each session of the legislature, and may at any other time, make a report of its doings and of its recommendations to the legislature.

No compensation.

SEC. 4. That no member of said board shall receive any compensation for his services.

BOARD OF VETERINARY MEDICAL EXAMINERS

An Act regulating the practice of veterinary medicine, surgery, and dentistry in the State of Nevada; creating the state board of veterinary medical examiners, and defining their duties; providing for the issuing of licenses to practice veterinary medicine, surgery, and dentistry; defining the practice of veterinary medicine, surgery, and dentistry; defining certain misdemeanors; and certain other matters relating thereto.

Approved February 21, 1919, 25

Must procure license.

SECTION 1. It shall be unlawful for any person to practice veterinary medicine, surgery or dentistry at any place within the State of Nevada after July 1, 1919, without first obtaining a license so to do, as hereinafter provided.

Governor to appoint board.

SEC. 2. Within thirty days after the passage and approval of this act it shall be the duty of the governor to appoint a state board consisting of three members, which shall be known as the state board of veterinary medical examiners, hereinafter called the board. The members of the board first appointed shall hold office, one for two years, one for three years, and one for four years, as designated by the governor, after the date of their appointment; thereafter one member shall be appointed annually for the term of three years. In the event of a vacancy occurring in said board, or the absence of any member from the state for a period of six months without permission from the governor, the governor may appoint a person duly qualified under this act to fill the unexpired term.

Members to take oath.

SEC. 3. Each member of said board shall, before entering upon the duties of his office, take the constitutional oath of office, and shall, in addition, make oath that he is a graduate in veterinary medicine, and legally qualified, under the provisions of this act, to practice veterinary medicine, surgery and dentistry in the State of Nevada.

Meetings of board—Officers.

SEC. 4. The said board shall meet at Carson City at the call of the governor on the first Monday in May, 1919, and organize by electing from its members a president, vice-president and secretary-treasurer to serve at the pleasure of the board and designating some convenient place within the state as the office of the board. The board shall hold regular meetings at their established office on the first Monday of May and November of each year. Special meetings of the board may be held at the call of the president whenever there is sufficient business to come before the board to warrant such action, at any place most convenient to the board. Two members shall constitute a quorum for the transaction of business.

Board to adopt rules—Licenses—Fee for license—License revoked, when.

SEC. 5. The board may, from time to time, adopt such rules as it deems necessary to carry into effect the provisions of this act. Said board may examine candidates for license to practice, either in writing or orally, or both, in order to determine their qualifications; and issue licenses based upon the results of such examination; or may license candidates upon the presentation of sufficient proof that they have been licensed elsewhere; *provided*, that the requirements where such license was issued are at least equal to those herein provided.

Any person who desires to secure the license above referred to shall make application in writing to the secretary of the board, accompanied by

satisfactory proof that he is more than 21 years of age, of good moral character, has received a diploma conferring the degree of doctor of veterinary medicine, or its equivalent, from a veterinary school or college authorized by law to confer such degree, and is possessed of professional and educational qualifications at least equal to those required for a permanent appointment as a veterinary inspector in the bureau of animal industry, United States department of agriculture, before he may be considered as a candidate for such license. Applicants for license shall pay to the secretary the sum of ten dollars (\$10). If an applicant is denied a license, the fee shall not be returned to him. All persons who have engaged in the practice of veterinary surgery and medicine in the State of Nevada for a period of four years or more immediately prior to the passage of this act shall be exempt from taking the above examination and upon proof of such practice of veterinary surgery and medicine in the State of Nevada for a period of four years or more shall be granted a license for the practice of veterinary surgery and medicine within the State of Nevada, upon the payment to the secretary of such board of the sum of ten (\$10) dollars.

Any member of said board may administer oaths in all matters pertaining to the duties of said board, and the board shall have authority to take evidence as to any matter cognizable by it.

Any license issued by the board may be revoked by them upon satisfactory proof that the holder of said license is guilty of unprofessional conduct; gross immorality; habitual drunkenness; or is addicted to the use of habit-forming drugs after full and fair investigation of the charges preferred against the accused.

Practitioners must register.

SEC. 6. Every person who may be licensed to practice veterinary medicine, surgery, or dentistry within the State of Nevada shall, before beginning said practice, register his license with the clerk of the county in which he resides.

Treasurer to hold money—No compensation.

SEC. 7. All money received for licenses shall be held by the treasurer of the board subject to its order. Said money shall be used to meet the expenses of the board for stationery, books of record, blanks and other supplies and actual expenses of members of the board in attendance upon meetings. Members of the board shall serve without compensation, but shall receive their actual expenses in attendance upon meetings or in the transaction of other business of the board, in so far as the money received from licenses is sufficient therefor, but not otherwise. The payment of money from the funds of the board shall be made upon the written order of the president, countersigned by the secretary.

Practice of veterinary medicine defined.

SEC. 8. For the purposes of this act the practice of veterinary medicine, surgery or dentistry is defined as follows:

To open or maintain an office or hospital for consultation or the treatment or prevention of disease of domesticated animals by means of drugs, medicines, surgical or dental operations, the administration of sera, vaccines or other biological preparations for the treatment, or prevention, or diagnosis of disease, or otherwise; or to announce to the public or any individual in any way a desire or readiness or willingness to perform any of the above-mentioned acts or to perform any of the aforesaid acts for the doing of which he receives or expects to receive any money, fee, salary or any consideration of value. The illegal use, in connection with his name, by any person giving veterinary advice or performing veterinary services

without charge or the expectancy of compensation, directly or indirectly, therefor, of the words doctor, veterinarian, veterinary, veterinary surgeon, veterinary dentist, or the letters Dr., D.V.M., V.D.M., M.D.C., V.S., or any other letters, symbol or title, indicating that such person is graduated from some school or college which is authorized by law to confer such degree, shall be construed as constituting the practice of veterinary medicine, surgery or dentistry, within the meaning of this act. Nothing in this act shall be construed to apply to castrating, dehorning or vaccinating domesticated animals nor to the gratuitous treatment of diseased animals by friends or neighbors of the owner thereof, nor to any person treating diseased animals who does not in any way assume to practice as a veterinary surgeon; or to debar any veterinarian in the employ of the United States government or the State of Nevada from performing official duties necessary for the conduct of the business of the United States government or the State of Nevada upon which he is assigned; or any veterinarian who shall be called into the state for consultation by a person licensed to practice under this act; or any veterinarian resident in an adjoining state, near the boundaries of this state, whose field for practice properly extends to points within this state, so long as the greater portion of his practice is in the state of his residence and he does not open or maintain an office or branch office within this state, and provided that he is licensed to practice veterinary medicine, surgery and dentistry in the state wherein he resides.

Penalty for violation.

SEC. 9. Any violation of the provisions of this act shall constitute a misdemeanor. It shall be the duty of the attorney-general of this state and of the district attorneys of the respective counties of this state to prosecute violators of this act when requested by the board so to do.

TELEPHONE

An Act in relation to the installation of instruments by telephone companies doing business in this state, and providing a penalty for the violation thereof.

Approved March 26, 1913, 447

Companies must install instrument.

SECTION 1. Upon the application in writing of the owner or occupant of any building or premises located within a telephone exchange district distant not more than two hundred feet from any wire or supply except ones used in interstate service of any telephone company or corporation, and payment by the applicant of all money due from him, the company or corporation must install and place in proper position, all necessary instruments and appliances, and furnish and supply necessary electric energy and power for use in operating said telephone instruments in such building or premises, and cannot refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same, nor require any deposit or payment in advance; *provided, however*, any such corporation may at its option require such applicant to execute a bond to such corporation in a sum not to exceed five dollars with one surety thereon who is a freeholder of the county within which said premises are located conditioned for the payment of any indebtedness due or to become due such corporation by reason of any such service, which bond shall be prepared by such corporation requiring the same.

If for the space of thirty days after such application, the company or corporation refuses or neglects to provide and install such instruments and furnish services required, it must pay to the applicant the sum of fifty dollars as liquidated damages, and five dollars per day as liquidated damages for every day such refusal or neglect continues thereafter.

UNIVERSITY OF NEVADA

4640. Number of regents and how elected—Governor to fill vacancies.

SEC. 2. The board of regents of the state university shall consist of five members. At the general election held in 1918 there shall be elected three regents, one of whom shall hold office for the term of ten years, another for term of eight years, and the third for the term of six years. At the general election held in 1920 there shall be elected two regents, one of whom shall hold office for the term of ten years and the other for the term of two years. Thereafter, at each general election, there shall be elected one regent, who shall hold office for the term of ten years. The persons elected as regents under the provisions of this act, before entering upon the discharge of the duties of the office of regent, shall take and subscribe the official oath and file the same in the office of the secretary of state. In case of a vacancy in the board of regents the governor shall fill the same by the appointment of a qualified person to serve until the expiration of the term for which the regent, whose death, resignation, removal, or as the case may be, shall have caused the vacancy, was originally elected. The term of office of each regent shall begin on the first Monday in January next succeeding the date of his election. *As amended, Stats. 1917, 352.*

4641. Powers and duties of regents.

SEC. 3. The powers and duties of the board of regents are as follows:

First—To prescribe rules for their own government, and for the government of the university.

Second—To prescribe rules for the reports of officers and teachers of the university.

Third—To prescribe the course of study, the time and standard of graduation and the commencement and duration of the terms, and the length of the vacations of the university.

Fourth—To prescribe the text-books, and provide apparatus and furniture for the use of pupils.

Fifth—To appoint a president of the University of Nevada, who shall have a degree from a college or university recognized as equal in rank to those having membership in the Association of American Universities, who has had at least five years of practical experience as an educator in a college or university of good standing, three years of which must have been during the five years immediately preceding the date of his appointment, who is familiar with the modern methods of imparting instruction in the United States, and who shall be endorsed as to moral character and qualifications as an educator by the president and faculty of three institutions of learning authorized by law to confer degrees. The word "faculty," as used in this section, shall be construed to mean any academic body of any college or university which shall include all department heads. A resolution adopted by any such faculty and signed by the president shall constitute a valid endorsement in the meaning of this act.

Sixth—To prescribe the duties of the president, and fix his salary, and the salaries of all other teachers in the university.

Seventh—To require the president, under their direction, to establish

and maintain training or model schools, and require the pupils of the university to teach and instruct classes therein.

Eighth—To control the expenditures of all moneys appropriated for the support and maintenance of the university, and all moneys received from any source whatsoever.

Ninth—To keep open to public inspection an account of receipts and expenditures.

Tenth—To annually report to the governor a statement of all their transactions, and of all other matters pertaining to the university.

Eleventh—To transmit with such report a copy of the president's annual report.

Twelfth—To revoke any diploma by them granted, on receiving satisfactory evidence that the holder thereof is addicted to drunkenness, is guilty of gross immorality, or is reputably dishonest in his or her dealings; *provided*, that such person shall have at least thirty days' previous notice of such contemplated action, and shall, if he or she asks it, be heard in his or her own defense. *As amended, Stats. 1917, 52.*

4666. Board created.

SECTION 1. There is hereby created a board to be known as the honorary board of visitors of the Nevada state university. Said board shall consist of one member from each county, and, in addition thereto, the chief justice of the supreme court shall be ex officio a member and chairman of said board. In the absence of the said chief justice the members of the board may elect one of their own number as temporary chairman. The term of office of the members of said board shall be two years from the date of their appointment, and until their successors are appointed. *As amended, Stats. 1918, 158.*

Stats. 1915, 114, repealed, Stats. 1917, 71.

An Act setting aside and appropriating certain moneys for the maintenance and support of the University of Nevada, and defining the powers and duties of the board of regents, and of the state controller in relation thereto.

Approved March 26, 1913, '402

Certain public moneys dedicated.

SECTION 1. The interest derived from the investment of all moneys arising from the sale of the 90,000 acres of land granted to the State of Nevada by act of Congress approved July 2, 1862; the interest derived from the investment of all moneys arising from the sale of the seventy-two sections of land granted to the State of Nevada by act of Congress approved July 4, 1866, for the establishment and maintenance of a university; all money paid as interest on deferred installments on purchase of lands named in this act which may be sold under contract as provided in section 9 of an act entitled "An act to provide for the selection and sale of lands," etc., approved March 4, 1871; and all money arising from the ad valorem tax on taxable property in the State of Nevada, including net proceeds of mines and mining claims, for university purposes, is hereby set aside and inviolably appropriated for the support and maintenance of the University of Nevada, and shall be paid out for the purposes designated in the acts creating the several funds without further appropriation.

Board of regents sole trustees.

SEC. 2. The board of regents of said university and agricultural and mechanical college, as provided in section 4 of article 11 of the constitution of Nevada, are the sole trustees to receive and disburse all funds of said

university and agricultural and mechanical college for the purposes provided in section 1 of this act; *provided*, that all claims, before payment, of every name and nature involving the payment of money by or under the direction of the board of regents from the funds so set aside and appropriated, shall be passed upon by the board of examiners.

State controller to report.

SEC. 3. It shall be the duty of the state controller to report to the board of regents of said university and agricultural and mechanical college, on or before the last day of each and every month, the detail of all income received for university purposes from whatsoever source.

An Act authorizing and empowering the regents of the University of Nevada to receive grants of money appropriated under that certain act of the Congress of the United States of America, entitled "An act to provide for cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of Congress approved July 2, 1862, and of acts supplementary thereto, and the United States Department of Agriculture"; and to organize and conduct agricultural extension work in connection with the college of agriculture of the University of Nevada, in accordance with the terms and conditions expressed in said act of Congress.

Approved February 10, 1915, 10

WHEREAS, The Congress of the United States has passed an act approved by the president May 8, 1914, entitled "An act to provide for cooperative agricultural extension work between the agricultural colleges, in the several states receiving the benefits of the act of Congress approved July 2, 1862, and of acts supplementary thereto, and the United States Department of Agriculture"; and

WHEREAS, It is provided in section 3 of the act aforesaid that the grants of money authorized by this act shall be paid annually to "each state which shall by action of its legislature assent to the provisions of this act"; now, therefore:

University authorized to receive.

SECTION 1. That the assent of the State of Nevada, by its legislature, be, and it is, hereby given to the provisions and requirements of said act, and that the regents of the University of Nevada be, and they are, hereby authorized and empowered to receive the grants of money appropriated under said act, and to organize and conduct agricultural extension work which shall be carried on in connection with the college of agriculture of the University of Nevada, in accordance with the terms and conditions expressed in the act of Congress aforesaid.

An Act providing for the consolidation of the various public-service departments of the University of Nevada under the heading "Public Service Division of the University of Nevada," and providing for a uniform method of administration and control, and for the making of rules and regulations whereby the work of these departments may be most effective, and stating the departments comprehended herein.

Approved March 11, 1915, 115

Public-service departments consolidated.

SECTION 1. It is hereby provided that the several public-service departments of the University of Nevada be consolidated into a "Public Service Division" of the University of Nevada.

Departments included.

SEC. 2. The public service division of the University of Nevada shall consist of the following public-service departments, which have been conducted heretofore by authority of statutes of the State of Nevada, enumerated as follows:

1. State analytical laboratory, provided for in sections 4660-4663, inclusive, of the Revised Laws of the State of Nevada, 1912;
2. State hygienic laboratory, provided for in sections 3941-3945, inclusive, of the Revised Laws of the State of Nevada, 1912;
3. Food and drug control, provided for in chapter 226, Session Laws of the State of Nevada, Twenty-sixth session, 1913;
4. Weights and measures, provided for in sections 4792-4823, inclusive, of the Revised Laws of the State of Nevada, 1912, as amended by chapter 228, Session Laws of the State of Nevada, Twenty-sixth session, 1913;
5. Agricultural extension, as provided for in the Session Laws of the State of Nevada, Twenty-seventh session, 1915;
6. State veterinary control service, as provided for in the Session Laws of the State of Nevada, Twenty-seventh session, 1915;
7. Agricultural experiment station, as provided for in sections 456-464, inclusive, of the Revised Laws of the State of Nevada, 1912;
8. Engineering experimentation, as provided for in the Session Laws of the State of Nevada, Twenty-seventh session, 1915.

Regents to appoint heads of departments.

SEC. 3. The board of regents of the University of Nevada, upon recommendation of the president, shall designate and appoint a qualified individual to conduct each of these various departments of the public service division, and shall grant him such assistants as they deem necessary, and the powers and duties of these individuals appointed as herein provided shall be as stated in the statutes establishing each of these several departments of the public service division; *provided, however*, that in those instances wherein the statutes concerned impose upon the individual appointed as herein provided any police power, the appointment shall receive the approval of the governor of the state.

Rules and regulations.

SEC. 4. All rules and regulations necessary for the proper administration and enforcement of the statutes establishing the departments comprehended in this public service division of the University of Nevada shall be made by the president and board of regents of the University of Nevada.

Words substituted.

SEC. 5. Wherever in any of these statutes establishing the departments comprehended in the public service division of the University of Nevada any individual, official, or department of the university is mentioned, there shall be substituted the words "President and Board of Regents of the University."

An Act to create a fund to be known as the "University Revolving Fund," and appropriating money therefor.

Approved March 18, 1915, 225

Fund created.

SECTION 1. There is hereby appropriated from the money coming into the treasury of the State of Nevada, which by force of statute, tax, or otherwise, is intended for the support of the University of Nevada or any of its departments, the sum of \$20,000, to be known as the "University Revolving Fund." Upon the written request of the board of regents of the

University of Nevada, the controller of the State of Nevada is hereby directed and authorized to draw his warrant in favor of the board of regents of the University of Nevada for said sum of \$20,000, and upon presentation of the same to the treasurer of the State of Nevada the said treasurer of the State of Nevada is hereby directed and authorized to pay said sum of \$20,000 to said board of regents.

Purpose of fund.

SEC. 2. Said "University Revolving Fund" shall be used by said board of regents for the purpose of paying the current expenses of maintaining and conducting the said university, and for no other purpose; and all bills or demands paid by said board of regents from said fund shall, after payment thereof, be passed upon by the state board of examiners in the same manner as other claims against the State of Nevada, and when approved by said board of examiners the controller shall draw his warrant for the amount of such claim or claims, in favor of the university revolving fund, to be paid to the order of the board of regents.

An Act to empower the board of regents of the University of Nevada to establish emeritus positions, establishing the conditions and qualifications of those who shall benefit thereunder.

Approved March 24, 1915, 314

Emeritus positions authorized.

SECTION 1. The board of regents of the University of Nevada are hereby empowered to establish emeritus positions. When it shall be found that an employee of the university, who has served the university for at least fifteen years continuously, has, because of physical or mental disability, become unfit for further service, or such an employee has left a widow with insufficient support, the board of regents may, upon recommendation of the president of the university and the approval of the governor of the state, place such individual or his widow upon the pay-roll of the university at a salary which shall not be more than one-half of the average salary received by the employee for the period of five years previous to the date of retirement. The regents of the university shall include in the estimates for maintenance a sum necessary to meet this expenditure.

An Act to establish at the University of Nevada a state veterinary control service, defining its duties, and providing for the conduct of the same, and stating its relation to the state quarantine laws.

Approved March 11, 1915, 113

Control service established.

SECTION 1. The president and board of regents of the University of Nevada are hereby instructed to establish at the University of Nevada a laboratory, to be known as the state veterinary control service, for the diagnosis of infectious diseases among animals and the conduct of research into the nature, cause, and control of such diseases.

Equipment to be provided.

SEC. 2. The regents of the university shall, from any moneys appropriated therefor, purchase suitable equipment, apparatus, chemicals, and supplies for the maintenance of such veterinary control service at the university.

Veterinarian must be bacteriologist.

SEC. 3. The regents of the university shall, upon the recommendation of

the president, appoint a qualified veterinarian, a bacteriologist, to conduct and direct said control service and shall grant him such assistants as they deem necessary. The individual thus appointed shall be known as the state quarantine officer.

Must enforce certain laws.

SEC. 4. In addition to his duties comprehended under the terms of this act, he shall be the official adviser and executive officer for the enforcement of the provisions contained in chapters 279 and 280 of the Session Laws of the State of Nevada, Twenty-sixth session, 1913; *provided, however*, that wherever in these acts the duties imposed upon such officer require the exercise of the police power of the state, he shall make his recommendation to the governor who shall take such action thereunder as he may deem wise.

Rules for conduct of service.

SEC. 5. The president and board of regents of the University of Nevada may make such rules and regulations for the conduct of the said veterinary control service and for the guidance of the state quarantine officer as they may deem wise for the proper conduct of the office of state quarantine officer, as herein provided. All moneys appropriated by the state provided for the expense of the enforcement of chapters 279 and 280 of the Session Laws of the State of Nevada, Twenty-sixth session, 1913, shall be expended with the approval of the president and board of regents of the University of Nevada.

VIRGINIA CITY SCHOOL OF MINES

4671. Repealed, Stats. 1919, 162.

VOCATIONAL REHABILITATION

An Act to accept the benefits of any act that may be passed by the senate and house of representatives of the United States of America, in Congress assembled, to provide for the promotion of vocational rehabilitation of persons disabled in industry, approved 1919.

Approved March 28, 1919, 329

Benefits of act accepted.

SECTION 1. That the State of Nevada does hereby accept the benefits of any act that may be passed by the senate and house of representatives of the United States of America, in Congress assembled, to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise, and their return to safe employment, and will observe and comply with all of the requirements of said act.

State board of education authorized to act.

SEC. 2. That the state board of education is hereby designated as the state board for the purposes of the said act, and is hereby given all the necessary power to cooperate with the federal board for vocational education in the administration of the provisions of the act.

Joint action of said board.

SEC. 3. It shall be the duty of the state board of education to act jointly with the industrial commission in the administration, supervision, designation and support of the courses in vocational rehabilitation to be provided in carrying out the provisions of this act.

Powers of joint board.

SEC. 4. Said joint board shall have the power to provide courses in this state or other states, in their discretion, for vocational rehabilitation of injured persons; *provided, however*, that such arrangements shall be approved by the governor in writing.

State treasurer custodian of funds.

SEC. 5. That the state treasurer is hereby designated and appointed as custodian of the funds for vocational rehabilitation, and shall receive and provide for the proper custody and disbursement of moneys paid to the state from the appropriations made by said act, and of moneys hereinafter appropriated by the state for this purpose.

SEC. 6. [Carrying appropriation; omitted.]

WAREHOUSE RECEIPTS

HISTORICAL INTRODUCTION TO THE UNIFORM WAREHOUSE RECEIPTS ACT

In 1914 the Conference of Commissioners on Uniform State Laws undertook the drafting of an Act to make uniform the laws of Warehouse Receipts, and engaged Professor Samuel Williston, of the Harvard Law School, and Mr. Barry Mohum, of the Washington Bar, to make the proposed draft. The preliminary work of the draftsmen was submitted to the Conference at its meeting at Narragansett Pier on August 18, 1905. A number of changes were made and the matter recommitted to the draftsmen to prepare a new draft.

During the ensuing winter and spring the Act was carefully considered at meetings of the American Warehousemen's Association and of a committee of the American Bankers Association. The draftsmen were present at these meetings and explained the provisions of the Act. Valuable suggestions as to the best usage in the business and as to the necessities of commerce were made by the warehousemen and bankers. With the added light furnished by suggestions and criticisms, a new draft was prepared and submitted to the Conference at St. Paul in August, 1906. This draft was considered section by section, both by the Committee on Commercial Law and by the Conference as a whole, and, with some changes embodied in its final form, was adopted and recommended to the Legislatures of the several States for passage. Forty-four States had enacted the Uniform Warehouse Receipts Act up to August 1, 1919.

An Act providing a general law on the subject of warehouse receipts, to be known as "The Warehouse Receipts Law."

Approved March 26, 1913, 424

Warehouse receipts.

SECTION 1. Warehouse receipts may be issued by any warehouseman.

What receipts shall embody—Warehouseman liable, when.

SEC. 2. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

- (a) The location of the warehouse where the goods are stored.
- (b) The date of issue of the receipt.
- (c) The consecutive number of the receipt.

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

(e) The rate of storage charges.

(f) A description of the goods or of the packages containing them.

(g) The signature of the warehouseman, which may be made by his authorized agent.

(h) The receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

Terms and conditions in receipt.

SEC. 3. A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a) Be contrary to the provisions of this act.

(b) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Non-negotiable receipt.

SEC. 4. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

Negotiable receipt.

SEC. 5. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt. No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

Duplicate, when.

SEC. 6. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

Must bear words "non-negotiable" or "not negotiable."

SEC. 7. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

Warehouseman must deliver goods, when.

SEC. 8. A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien;

(b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

To whom goods delivered.

SEC. 9. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods, or his agent,

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

When warehouseman liable for illegal delivery.

SEC. 10. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery; or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

Warehouseman liable, to whom.

SEC. 11. Except as provided in section 36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

Further liabilities.

SEC. 12. Except as provided in section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable,

to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

Altered receipt no excuse.

SEC. 13. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was—

- (a) Immaterial,
- (b) Authorized, or
- (c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

Lost receipt, procedure.

SEC. 14. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees. The delivery of the goods under an order of the court, as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

Duplicate receipt.

SEC. 15. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

Concerning transfers of title to goods.

SEC. 16. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

When title to goods is disputed.

SEC. 17. If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

Warehouseman excused, when.

SEC. 18. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

Third person's title no defense.

SEC. 19. Except as provided in the two preceding sections and in sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

Warehouseman liable for damages, when.

SEC. 20. A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

Liable for injury to goods.

SEC. 21. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

To keep goods separate.

SEC. 22. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

Concerning fungible goods.

SEC. 23. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

Liable to each depositor.

SEC. 24. The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

When goods exempt from garnishment.

SEC. 25. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good

faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

Creditor's rights.

SEC. 26. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

When warehouseman has lien on goods.

SEC. 27. Subject to the provisions of section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

Lien enforced, how.

SEC. 28. Subject to the provisions of section 30 a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted if such person has been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

Lien lost, how.

SEC. 29. A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof; or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

No lien, when.

SEC. 30. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 27, although the amount of the charges so enumerated is not stated in the receipt.

Valid lien authorizes refusal to deliver.

SEC. 31. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

Warehouseman entitled to all legal remedies.

SEC. 32. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

Lien due, how satisfied.

SEC. 33. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due.

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

Concerning perishable goods.

SEC. 34. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

Remedy not exclusive.

SEC. 35. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

When warehouseman not liable.

SEC. 36. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

Receipts, how negotiated—By delivery—By endorsement.

SEC. 37. A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

Transfer of receipt.

SEC. 38. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

Non-negotiable receipt, how transferred.

SEC. 39. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

Negotiable receipt, how negotiated.

SEC. 40. A negotiable receipt may be negotiated—

(a) By the owner thereof; or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

What negotiable receipt transfers.

SEC. 41. A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

What transferred receipt includes.

SEC. 42. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title of the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

Right of transferor.

SEC. 43. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

What transfer of receipt warrants.

SEC. 44. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine,

(b) That he has a legal right to negotiate or transfer it,

(c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and

(d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

Indorser not liable, when.

SEC. 45. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfil their respective obligations.

Pledgee does not warrant genuineness.

SEC. 46. A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

Validity not impaired, when.

SEC. 47. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

Effect of sale or mortgage of goods.

SEC. 48. Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

Rights of purchaser in good faith not defeated, when.

SEC. 49. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiations be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancelation.

False receipt, when issue of, is crime.

SEC. 50. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

False statement in receipt punished.

SEC. 51. A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by

imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Fraudulent receipts, issue of, how punished.

SEC. 52. A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars or by both.

Other fraudulent acts, crimes.

SEC. 53. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Unlawful delivery of goods a crime.

SEC. 54. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 14 and 36, be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Deposit of goods by one who has no title a crime.

SEC. 55. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Rules of law and equity to govern.

SEC. 56. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

Law, how interpreted.

SEC. 57. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Definition of terms.

SEC. 58. (1) In this act, unless the context or subject-matter otherwise requires—

"Action" includes counter-claim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

Not retroactive.

SEC. 59. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

Repeal.

SEC. 60. All acts or parts of acts inconsistent with this act are hereby repealed.

Title of act.

SEC. 61. This act shall be known as the "Warehouse Receipts Law."

WATER

4672-4705. Repealed, Stats. 1913, 219, and following act (Stats. 1913, 192) substituted:

4672. See *Prosole v. Steamboat Canal Co.*, 37 Nev. 155, under section 4674.

4673. See *Prosole v. Steamboat Canal Co.*, 37 Nev. 155, under section 4674.

Cited, *Ormsby County v. Kearney*, 37 Nev. 386 (142 P. 803).

4674. There is no absolute property in the waters of a natural stream, and the only right one may acquire thereto is by diverting the waters for a usufructuary purpose, and a water right, to be available, must be attached to the land and become in a sense appurtenant thereto by actual application. *Prosole v. Steamboat Canal Co.*, 37 Nev. 155, 159 (140 P. 720; 144 P. 744).

4677. This section and the Water Law (Stats. 1913, 192) provide that in all measurements of water a cubic foot of water per second of time shall be the standard of measurement. Plaintiff sued defendant to have adjudged that he was the owner of three-eighths of the water of a creek, and the court so decreed and enjoined defendant from diverting such three-eighths of the water or any part thereof from the stream. Held, that the decree was too uncertain as to the quantity of water to which plaintiff was entitled, but should use the standard of measurement described by the statutes or by some measurement readily translatable therein. *Ramelli v. Sorgi*, 38 Nev. 552, 558 (149 P. 71).

An Act to provide a water law for the State of Nevada; providing a system of state control; creating the office of the state engineer and other offices connected with the appropriation, distribution and use of water, prescribing the duties and powers of the state engineer and other officers and fixing their compensation; prescribing the duties of water users and providing penalties for failure to perform such duties; providing for the appointment of water commissioners, defining their duties and fixing their compensation; providing for a fee system, for the certification of records, and an official seal for the state engineer's office; providing for an appropriation to carry out the provisions of this act; and other matters properly connected therewith, and to repeal all acts and parts of acts in conflict with this act, repealing an act to provide for the appropriation, distribution and use of water, and to define and preserve existing water rights, to provide for the appointment of a state engineer, an assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners and defining their duties, approved February 26, 1907; also repealing an act amendatory of a certain act entitled "An act to provide for the appropriation, distribution and use of water, and to define and preserve existing water rights, to provide for the appointment of a state engineer and assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners and defining their duties, approved February 26, 1907, and to provide a fee system for the certification of the records of, and an official seal for the state engineer's office and other matters relating thereto," approved February 20, 1909.

Approved March 22, 1913, 192

GENERAL PROVISIONS

All water public property.

SECTION 1. The water of all sources of water supply within the boundaries of the state, whether above or beneath the surface of the ground, belongs to the public.

Cited, *Bergman v. Kearney*, 241 F. 892, 896.

Beneficial use.

SEC. 2. Subject to existing rights, all such water may be appropriated for beneficial use as provided in this act and not otherwise.

Cited, *Bergman v. Kearney*, 241 F. 892, 896.

Basis.

SEC. 3. Beneficial use shall be the basis, the measure and the limit of the right to the use of water.

Provisions for use.

SEC. 4. All water used in this state for beneficial purposes shall remain appurtenant to the place of use; *provided*, that if for any reason it should at any time become impracticable to beneficially or economically use water at the place to which it is appurtenant, said right may be severed from such place of use and simultaneously transferred and become appurtenant to other place or places of use, in the manner provided in this act, and not otherwise, without losing priority of right heretofore established; *and provided*, that the provisions of this section shall not apply in cases of ditch or canal companies which have appropriated water for diversion and transmission to the lands of private persons at an annual charge.

Right to divert ceases, when.

SEC. 5. When the necessity for the use of water does not exist, the right to divert it ceases, and no person shall be permitted to divert or use the waters of this state except at such times as the water is required for a beneficial purpose.

Right of eminent domain.

SEC. 6. The beneficial use of water is hereby declared a public use, and any person may exercise the right of eminent domain to condemn all lands and other property or rights required for the construction, use and maintenance of any works for the lawful diversion, conveyance and storage of waters.

Relative to storage.

SEC. 7. Water may be stored for a beneficial purpose. Water turned into any natural channel or watercourse by any person entitled to the use thereof, whether stored in Nevada or in an adjoining state, may be claimed for beneficial use below, and diverted from said channel or watercourse by such person, subject to existing rights, due allowance for losses to be made, as determined by the state engineer.

Regulations as to use and appropriation.

SEC. 8. Rights to the use of water shall be limited and restricted to so much thereof as may be necessary, when reasonably and economically used for irrigation and other beneficial purposes, irrespective of the carrying capacity of the ditch; and all the balance of the water not so appropriated shall be allowed to flow in the natural stream from which such ditch draws its supply of water, and shall not be considered as having been appropriated thereby; and in case the owner or owners of any such ditch, canal or reservoir shall fail to use the water therefrom for beneficial purposes for which right exists during any five successive years, the right to use shall be considered as having been abandoned, and they shall forfeit all water rights, easements and privileges appurtenant thereto, and the water formerly appropriated by them may be again appropriated for beneficial use, the same as if such ditch, canal or reservoir had never been constructed. *As amended, Stats. 1917, 353.*

Standards of measurement.

SEC. 9. A cubic foot of water per second of time shall be the legal standard for the measurement of water in this state. The unit of volume shall be an acre-foot defined as 43,560 cubic feet. Where necessary to transpose miners inches to cubic feet per second, one cubic foot per second shall be considered equal to forty miners inches; but the term "miners inch" shall not be used henceforth in any permit or adjudicated right issuing from the office of the state engineer without first naming the amount in cubic feet per second or in acre-feet.

Stats. 1913, 197, sec. 10, repealed, Stats. 1919, 197. Section 1, Stats. 1919, 197, is a substitute therefor.

Maximum amount allowed.

SEC. 11. The maximum quantity of water which may hereafter be appropriated in this state for irrigation purposes shall be as follows:

Where the water is diverted for direct irrigation, not to exceed one one-hundredth of one cubic foot per second for each acre of land irrigated; the measurement to be taken where the main ditch enters or becomes adjacent to the land to be irrigated; due allowance for losses to be made by the state engineer in permitting additional water to be diverted into said ditch.

Where water is stored, not to exceed four acre-feet for each acre of land

to be supplied; that is, four acre-feet per acre stored in the reservoir, the losses of evaporation and transmission to be borne by the appropriator.

Oath and bond of state engineer.

SEC. 12. Before entering upon the duties of his office, the state engineer shall take and subscribe to an official oath, such as is provided by law for state officers, before some officer authorized by the law of the state to administer oaths, and shall file with the secretary of state said oath and his official bond in the penal sum of five thousand dollars (\$5,000) with not less than two sureties to be approved by the governor, conditioned for the faithful performance of his duties and for the delivery to his successor or other person to be appointed by the governor to receive the same, all maps, papers, books, instruments and other property belonging to the state then in his hands and under his control, or with which he may be chargeable, to such officer.

Stats. 1913, 194, sec. 13, repealed, Stats. 1919, 197. Sec. 2, Stats. 1919, 197, is a substitute therefor.

Biennial report.

SEC. 14. The state engineer shall prepare and deliver to the governor, as soon as possible after December 31 of the year preceding the regular session of the legislature, and at such other times as may be required by the governor, a full report of the work of his office, including a detailed statement of the expenditures thereof, with such recommendations as he may deem advisable.

Records of office open.

SEC. 15. The records of the office of the state engineer are public records and shall remain on file in his office and be open to the inspection of the public at all times during business hours. Such records shall show in full all maps, profiles, and engineering data relating to the use of water, and certified copies thereof shall be admissible as evidence in all cases where the original would be admissible as evidence.

May administer oaths.

SEC. 16. The state engineer and his authorized assistants may administer such oaths as may be necessary in the performance of their official duties.

Office hours.

SEC. 17. The state engineer shall keep his office open to the public from the hours of 9 o'clock a. m. to 12 o'clock m., and from 1 o'clock p. m. to 4:30 o'clock p. m. each day, Sundays and holidays excepted.

Determination of rights, how effected.

SEC. 18. Upon a petition to the state engineer, signed by one or more water users of any stream or stream system, requesting the determination of the relative rights of the various claimants to the waters thereof, it shall be the duty of the state engineer, if upon investigation he finds the facts and conditions justify it, to enter an order granting said petition and to make proper arrangements to proceed with such determination; *provided, however*, that it shall be the duty of the state engineer, in the absence of such a petition requesting a determination of relative rights, to enter an order for the determination of the relative rights to the use of water, of any stream selected by him; commencing on the streams in the order of their importance for irrigation. As soon as practicable after said order is made and entered, it shall be the duty of the state engineer to proceed

with such determination as hereinafter provided. A water user upon or from any stream or body of water shall be held and deemed to be a water user upon the stream system of which said stream or body of water is a part or tributary.

Cited, *Bergman v. Kearney*, 241 F. 886.

Secs. 18-58 cited, *Bergman v. Kearney*, 241 F. 890.

Publication of orders.

SEC. 19. As soon as practicable after the state engineer shall make and enter the order granting the said petition or selecting the streams upon which the determination of rights is to begin, he shall prepare a notice setting forth the fact of the entry of the said order and of the pendency of the said proceedings, which notice shall name a date when the state engineer or his assistants shall begin said examination, and shall set forth that all claimants to rights in the waters of said stream system are required, as in this act provided, to make proof of their claims, which notice shall be published for a period of four consecutive weeks in one or more newspapers of general circulation within the boundaries of said stream system.

Investigation of flow of streams and ditches.

SEC. 20. At the time set in said notice, the state engineer shall begin an investigation of the flow of the stream and of the ditches diverting water, and of the lands irrigated therefrom, and shall gather such other data and information as may be essential to the proper determination of the water rights in the stream. He shall reduce his observations and measurements to writing, and execute or cause to be executed, surveys, and shall prepare, or cause to be prepared, maps from the observations of such surveys in accordance with such uniform rules and regulations as he may adopt, which surveys and maps shall show with substantial accuracy the course of the said stream, the location of each ditch or canal diverting water therefrom, together with the point of diversion thereof, the area and outline of each parcel of land upon which the water of the stream has been employed for the irrigation of crops or pasture, and indicating the kind of culture upon each of the said parcels of land, which map shall be prepared as the surveys and observations progress, and which, when completed, shall be filed and made of record in the office of the state engineer; *provided, however*, that such map for original filing in his office shall be on tracing linen on a scale of not less than one thousand feet to the inch.

Cited, *Bergman v. Kearney*, 241 F. 887.

Data of U. S. geological survey may be used—Provision regarding maps.

SEC. 21. In the event that satisfactory data are available from the measurements and areas compiled by the United States geological survey, or other persons, the state engineer may dispense with the execution of such surveys and the preparation of such maps and stream measurements, except in so far as is necessary to prepare them to conform with the rules and regulations, as above provided. In the further event that said surveys are executed and maps are prepared and filed with the state engineer at the instance of the person claiming a right to the use of water, the proportionate cost thereof, as determined by the state engineer to be assessed and collected for the adjudication of the relative rights, as hereinafter provided, shall be remitted to said claimant after the completion of the determination; *provided, however*, that the map must conform with the rules and regulations of the state engineer and shall be accepted only after the state engineer is satisfied that the data shown thereon are substantially correct. Such measurements, maps and determinations shall be exhibited for inspection at the time of taking proofs and during the period during which such

proofs and evidence are kept open for inspection in accordance with the provisions of this act.

Cited, *Bergman v. Kearney*, 241 F. 887.

Proofs, procedure regarding—Publication of notice.

SEC. 22. Upon the filing of such measurements, maps and determinations, the state engineer shall prepare a notice setting forth the date when the said state engineer is to commence the taking of said proofs, as to the rights in and to the waters of said stream system, and the date prior to which the same must be filed; *provided, however*, that the date set prior to which said proofs must be filed shall not be less than sixty days from the date set for the commencement of the taking of said proofs, which notice shall be deemed to be an order of the state engineer as to its contents, and which notice the state engineer shall cause to be published for a period of four consecutive weeks in one or more newspapers of general circulation within the boundaries of the said stream system, the date of the last publication of the said notice to be not less than fifteen (15) days prior to the date fixed for the commencement of the taking of proofs by the said state engineer. At or near the time of the first publication of said notice it shall be the duty of the said state engineer to send by registered mail to each person, or deliver to each person, in person, hereinafter designated as claimant, claiming rights in or to the waters of said stream system, in so far as such claimants can be reasonably ascertained, a notice equivalent in terms to the said published notice setting forth the date when the said state engineer will commence the said taking of proofs, and the date prior to which said proofs must be filed with the state engineer. Said notice must be mailed at least thirty (30) days prior to the date fixed for the commencement of the taking of said proofs.

Cited, *Bergman v. Kearney*, 241 F. 887.

Statement regarding rights.

SEC. 23. The state engineer shall, in addition, enclose with the notice to be mailed as aforesaid, blank forms upon which said claimant shall present in writing all particulars necessary for the determination of his right in or to the waters of said stream system, the said statement to include the following:

- (a) The name and postoffice address of the claimant.
- (b) The nature of the right or use on which the claim for appropriation is based.
- (c) The time of the initiation of such right and a description of works of diversion and distribution.
- (d) The date of beginning of construction.
- (e) The date when completed.
- (f) The dates of beginning and completion of enlargements.
- (g) The dimensions of the ditch as originally constructed and as enlarged.
- (h) The date when water was first used for irrigation or other beneficial purposes, and if used for irrigation, the amount of land reclaimed the first year, the amount in subsequent years, with the dates of reclamation, and the area and location of the lands which are intended to be irrigated.
- (i) The character of the soil and the kind of crops cultivated, the number of acre-feet of water per annum required to irrigate the land, and such other facts as will show the extent and nature of the right and a compliance with the law in acquiring the same, as may be required by the state engineer.

Cited, *Bergman v. Kearney*, 241 F. 887.

interested, and to issue subpoenas and compel the attendance of witnesses to testify at such hearings, which shall be served in the same manner as subpoenas issued out of the district courts of the state. He shall have the power to administer oaths to witnesses. In the case of neglect or refusal on the part of any person to comply with any order of the state engineer or any subpoena, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county, or any judge thereof, on application of the state engineer, to issue attachment proceedings for contempt, as in the case of disobedience of a subpoena issued from such court, or a refusal to testify therein. Said witnesses shall receive fees as in civil cases, the costs to be taxed in the same manner as in civil actions in this state. The evidence in such proceedings shall be confined to the subjects enumerated in the notice of contest and answer and reply, when the same are permitted to be filed. All testimony taken at such hearings shall be reported and transcribed in its entirety. *As amended, Stats. 1915, 379.*

Cited, *Bergman v. Kearney*, 241 F. 887.

Engineer to make rules governing contests.

SEC. 31. The state engineer shall have power to make rules, not in conflict herewith, governing the practice and procedure in all contests before his office, to insure the proper and orderly exercise of the powers herein granted, and the speedy accomplishment of the purposes of this act. Such rules of practice and procedure shall be furnished to any person upon application therefor.

Contestants to pay expenses.

SEC. 32. The state engineer shall require a deposit of five dollars (\$5) from each party for each day he shall be so engaged in taking evidence of such contest. Upon the final determination of the matters in the contest the money so deposited shall be refunded to the person in whose favor such contest shall be determined, and all moneys deposited by other parties therein shall be turned into the general fund of the state treasury upon the next monthly transmission of fees to said state treasurer.

Engineer to make and record order determining rights.

SEC. 33. As soon as practicable after the hearing of contests, it shall be the duty of the state engineer to make, and cause to be entered of record in his office, an order determining and establishing the several rights to the waters of said stream; *provided, however*, that within sixty days after the entry of an order establishing water rights, the state engineer may, for good cause shown, reopen the proceedings and grant a rehearing. Such order of determination shall be certified to by the state engineer, and as many copies as required printed in the state printing office. A copy of said order of determination shall be sent by registered mail, or delivered in person, to each person who has filed proof of claim, and to each person who has become interested through intervention or as a contestant under the provisions of section 26 or section 29 of this act. *As amended, Stats. 1915, 379.*

Cited, *Bergman v. Kearney*, 241 F. 888, 895.

Regulations concerning order.

SEC. 34. As soon as practicable thereafter a certified copy of the order of determination, together with the original evidence and transcript of testimony filed with, or taken before, the state engineer, as aforesaid, duly certified by him, shall be filed with the clerk of the county, as ex officio clerk of the district court, in which said stream system is situated, or if in more than one county but all within one judicial district, then with the

said clerk of the county wherein reside the largest number of parties in interest. But if such stream system shall be in two or more judicial districts, then the state engineer shall notify the district judge of each of such judicial districts of his intent to file such order of determination, whereupon, within ten days after receipt of such notice, such judges shall confer and agree where the court proceedings under this act shall be held and upon the judge who shall preside, and on notification thereof the state engineer shall file said order of determination, evidence, and transcripts with the clerk of the court so designated; *provided*, that if such district judges fail to notify the state engineer of their agreement, as aforesaid, within five days after the expiration of such ten days, then, and in that event, the state engineer may file such order of determination, evidence, and transcript with the clerk of any county he may elect, and the district judge of such county shall have jurisdiction over the proceedings in relation thereto. In all instances a certified copy of the order of determination shall be filed with the county clerk of each county in which such stream system, or any part thereof, is situated. Upon the filing of the certified copy of said order, evidence, and transcript with the clerk of the court in which the proceedings are to be had, the state engineer shall procure an order from said court setting the time for hearing. The clerk of such court shall immediately furnish the state engineer with a certified copy thereof. It shall be the duty of the state engineer immediately thereupon to mail a copy of such certified order of the court, by registered mail, addressed to each such party in interest at his last known place of residence, and to cause the same to be published at least once a week for four consecutive weeks in some newspaper of general circulation published in each county in which such stream system or any part thereof is located, and the state engineer shall file with the clerk of the court proof of such service by registered mail and by publication. And such service by registered mail and by publication shall be deemed full and sufficient notice to all parties in interest of the date and purpose of such hearing. *As amended, Stats. 1915, 380.*

(Cited, *Bergman v. Kearney*, 241 F. 888.

Exceptions to order, how made—Decree of court, when.

SEC. 35. At least five days prior to the day set for hearing all parties in interest who are aggrieved or dissatisfied with the order of determination of the state engineer shall file with the clerk of said court notice of exceptions to the order of determination of the state engineer, which notice shall state briefly the exceptions taken, and the prayer for relief, and a copy thereof shall be served upon or transmitted to the state engineer by registered mail. The order of determination by the state engineer and the statements or claims of claimants and exceptions made to the order of determination shall constitute the pleadings and there shall be no other pleadings in the cause. If no exceptions shall have been filed with the clerk of the court as aforesaid, then on the day set for the hearing, on motion of the state engineer, or his attorney, the court shall enter a decree affirming said order of determination. On the day set for hearing all parties in interest who have filed notices of exceptions as aforesaid shall appear in person or by counsel, and it shall be the duty of the court to hear the same or set the time for hearing, until such exceptions are disposed of, and all proceedings thereunder shall be as nearly as may be in accordance with the rules governing civil actions. *As amended, Stats. 1915, 381.*

Cited, *Bergman v. Kearney*, 241 F. 887, 888, 907.

Sections 35-39 cited, *Bergman v. Kearney*, 241 F. 895.

Experts may be called—Costs, how assessed.

SEC. 36. For further information on any subject in controversy the court may employ one or more qualified persons to investigate and report thereon under oath, subject to examination by any party in interest as to his competency to give expert testimony thereon. The court, may, if necessary, refer the case or any part thereof for such further evidence to be taken by the state engineer as it may direct, and may require a further determination by him, subject to the court's instructions. After the hearing, the court shall enter a decree affirming or modifying the order of the state engineer. Upon the hearing the court may assess and adjudge against any party such costs as it may deem just and equitable, or may assess the costs in proportion to the amount of water right allotted. Appeals from such decree may be taken to the supreme court by the state engineer or any party in interest, in the same manner and with the same effect as in civil cases. *As amended, Stats. 1915, 381.*

Cited, *Bergman v. Kearney*, 241 F. 888.

Copy of decree filed with engineer.

SEC. 37. The county clerk, immediately upon the entry of any decree by such court, shall transmit a certified copy of said decree to the state engineer, who shall immediately enter the same upon the records of his office, and which said decree, subject only to the provisions of law relating to appeal and stay of proceedings, shall be in full force and effect. *As amended, Stats. 1915, 381.*

Cited, *Bergman v. Kearney*, 241 F. 888.

Division of water pending determination, how.

SEC. 38. From and after the filing of the order of determination, evidence, and transcript with the county clerk as aforesaid, and during the time the hearing of said order is pending in the district court, the division of water from the stream involved in such determination shall be made by the state engineer in accordance with said order of determination. *As amended, Stats. 1915, 381.*

Cited, *Bergman v. Kearney*, 241 F. 888.

Operation of order stayed, how—Bond.

SEC. 39. At any time after the order of determination, evidence and transcript has been filed with the clerk of the court, as aforesaid, the operation of said order of determination may be stayed in whole or in part by any party upon filing a bond in the court wherein such determination is pending in such amount as the judge thereof may prescribe, conditioned that such party will pay all damage that may accrue by reason of such determination not being enforced, pending decree by said court. Immediately upon the filing and approval of such bond, the clerk of the court shall transmit to the state engineer a certified copy of such bond, which shall be recorded in the records of his office, and he shall act in accordance with such stay. *As amended, Stats. 1915, 382.*

Cited, *Bergman v. Kearney*, 241 F. 888.

Sections 40, 41, 42, 43 and 44 repealed. Stats. 1915, 382.

Section 40 cited, *Bergman v. Kearney*, 241 F. 895.

Section 41 cited, *Bergman v. Kearney*, 241 F. 895.

Section 42 cited, *Bergman v. Kearney*, 241 F. 895.

Section 43 cited, *Bergman v. Kearney*, 241 F. 895.

Section 44 cited, *Bergman v. Kearney*, 241 F. 894.

Joint defendants, who are—Suits may be transferred.

SEC. 45. In any suit which may be brought in any district court in the

state for the determination of a right or rights to the use of water of any stream, all persons who claim the right to use the waters of such stream and the stream system of which it is a part shall be made parties. When any such suit has been filed, the court shall, by its order duly entered, direct the state engineer to furnish a complete hydrographic survey of such stream system, which survey shall be made as provided in section 20 of this act, in order to obtain all physical data necessary to the determination of the rights involved. The cost of such suit, including the costs on behalf of the state and of such surveys, shall be charged against each of the private parties thereto in proportion to the amount of water right allotted. In the case of any such suit now pending or hereafter commenced the same may at any time after its inception, in the discretion of the court, be transferred to the state engineer for determination as in this act provided.

Appropriation for hydrographic fund.

SEC. 46. For the purpose of advancing the money required for any surveys so ordered by the court, there is hereby appropriated and set apart, from any moneys in the state treasury not otherwise appropriated, the sum of five thousand dollars (\$5,000) to be known as the hydrographic fund, which shall be a continuous fund. Such fund shall be used only for the payment of claims for services rendered, expenses incurred, or materials and supplies furnished under the direction of the state engineer in the prosecution of said work, which claims shall be paid by the state treasurer on warrants drawn by the state controller upon certificates of the state engineer. The amounts paid by the parties to said suit, on account of said surveys, shall be paid into said hydrographic fund.

"Stream system" defined.

SEC. 47. The words "stream system," as used in this act, shall be interpreted as including any stream, together with its tributaries and all streams or bodies of water to which the same may be tributary.

"Person" defined.

SEC. 48. The word "person," where used in this act, includes a corporation, an association, the United States, the state, as well as a natural person.

"State engineer" defined.

SEC. 49. Wherever the words "state engineer" are used in this act it shall be deemed to mean the state engineer or any duly authorized assistant.

Claimants must furnish blue-prints.

SEC. 50. The state engineer shall have power to make and enforce such reasonable rules and regulations for the furnishing of claimants of blue-prints of particular parcels of land shown on the map prepared by the state engineer, and for such supplementary surveys and examinations or such inspection by the state engineer, as may be required, to the end that observations and surveys of the state engineer may be made, in so far as practicable, available to the claimants for attachment to the proofs to be filed by them.

Engineer to issue certificates, when.

SEC. 51. Upon the final determination of the relative rights in and to the waters of any stream system, it shall be the duty of the state engineer to issue to each person represented in such determination a certificate to be signed by such state engineer, and bearing the seal of his office, setting forth the name and postoffice address of the owner of the right, the date

of priority, extent and purpose of such right; and if such water be for irrigation purposes, a description of the land, by legal subdivisions when possible, to which said water is appurtenant. Such certificate shall be transmitted by the state engineer in person or by registered mail to the county recorder of the county in which said right is located, and it shall be the duty of the county recorder upon the receipt of a recording fee of one dollar, collected as hereinbefore provided, to record the same in a book especially prepared and kept for that purpose, and thereupon immediately transmit the certificate to the respective owners.

Cited, *Bergman v. Kearney*, 241 F. 889, 912.

Water commissioners, how appointed—Duties—Charges, how based.

*Amended by
Chap 106
Sec 8
Stats 1915-24*

SEC. 52. There shall be appointed by the governor one or more water commissioners for each water district, who shall receive a salary, including all expenses, of not more than five dollars (\$5) per day for each day actually employed on the duties herein mentioned. Such water commissioner shall execute the laws prescribed in sections 53 to 88, inclusive, of this act under the general direction of the state engineer. The salary of such water commissioner shall be paid by the water users in the district in which they shall serve. The charge against each water user shall be based upon the proportion which his water right bears to the aggregate water rights in such district as determined by the state engineer or the court; *provided, however*, that the minimum charge to each water user shall be one dollar. The state engineer shall prepare and certify a list of the owners and areas of land served by such water commissioners, together with the addresses taken from the tax-roll of said county, and transmit the same to the board of county commissioners of the county in which such water commissioners serve, and upon receipt thereof the said board shall transmit to each and every such owner a statement showing the amount due for the services so rendered. Should such property owner fail to make payment to the county treasurer within thirty days from the receipt of such statement, then such amount shall constitute a lien upon the property served by such water commissioner, and be collectible in the same manner as taxes levied against said property. Such board of county commissioners may establish a special fund for each water district within such county which shall be known as "..... Water District Salary Fund," and all moneys collected from the water users in any such district shall be placed in such fund so established for such district. Upon a receipt of a certified statement from the state engineer showing the number of days such commissioners were actually employed, and the amount due, the board of county commissioners shall approve such statement and authorize the auditor of such county to draw his warrant therefor against such special water district salary fund; *provided, however*, that no such statement shall be so approved by the board of county commissioners unless there shall be sufficient money in such fund to meet the amount thereof. *As amended, Stats. 1915, 382; 1919, 384.*

State divided into districts, when.

SEC. 53. The state engineer shall divide the state into water districts to be so constituted as to insure the best protection for the water user, and the most economical supervision on the part of the state. Said water districts shall not be created until a necessity therefor shall arise and shall be created from time to time as the priorities and claims to the streams of the state shall be determined.

Engineer to insure proper distribution of water—Mode of procedure.

SEC. 54. It shall be the duty of the state engineer to divide or cause to

be divided the waters of the natural streams or other sources of supply in the state, among the several ditches and reservoirs taking water therefrom, according to the rights of each respectively, in whole or in part, and to shut or fasten, or cause to be shut or fastened, the headgates or ditches, and to regulate or cause to be regulated, the controlling works of reservoirs, as may be necessary to insure a proper distribution of the waters thereof. Such state engineer shall have authority to regulate the distribution of water among the various users under any partnership ditch or reservoir where rights have been adjudicated in accordance with existing decrees. Whenever, in pursuance of his duties, the water commissioner regulates a head-gate to a ditch or the controlling works of reservoirs, it shall be his duty to attach to such head-gate or controlling works a written notice properly dated and signed, setting forth the fact that such head-gate or controlling works has been properly regulated and is wholly under his control and such notice shall be a legal notice to all parties interested in the diversion and distribution of the water of such ditch or reservoir. It shall be the duty of the district attorney to appear for or in behalf of the state engineer or his duly authorized assistants in any case which may arise in the pursuance of the official duties of any such officer within the jurisdiction of said district attorney.

Cited, *Knox v. Kearney*, 37 Nev. 402 (142 P. 526).

Misdemeanor to interfere with water officers—Prima facie evidence.

SEC. 55. Any person who shall wilfully open, close, change or interfere with any lawfully established head-gate or water-box without authority, or who shall wilfully use water or conduct water into or through his ditch which has been lawfully denied him by the state engineer, his assistants or water commissioners, shall be deemed guilty of a misdemeanor.

The possession or use of water when the same shall have been lawfully denied by the state engineer or other competent authority shall be prima facie evidence of the guilt of the person using it.

Head-gates to be maintained—Measuring device.

SEC. 56. The owner or owners of any ditch or canal shall maintain to the satisfaction of the state engineer of the division in which the irrigation works are located, a substantial head-gate at or near the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water commissioner; and such owners shall construct and maintain, when required by the state engineer, suitable measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water commissioner in determining the amount of water that is to be diverted into said ditch from the stream, or taken from it by the various users. Any and every owner or manager of a reservoir located across or upon the bed of a natural stream or of a reservoir which requires the use of a natural stream channel, shall be required to construct and maintain, when required by the state engineer, a measuring device of a plan to be approved by the state engineer, below such reservoir, and a measuring device above such reservoir, on each or every stream or source of supply discharging into such reservoir, for the purpose of assisting the state engineer or water commissioners in determining the amount of water to which appropriators are entitled and thereafter diverting it for such appropriators' use. When it may be necessary for the protection of other water users, the state engineer may require flumes to be installed along the line of any ditch. If any such owner or owners of irrigation works shall refuse or neglect to construct and put in such head-gates, flumes, or measuring devices after ten (10) days' notice, the state engineer may close such ditch, and the same shall not be opened

or any water diverted from the source of supply, under the penalties prescribed by law for the opening of head-gates lawfully closed until the requirements of the state engineer as to such head-gate, flume, or measuring device have been complied with, and if any owner or manager of a reservoir located across the bed of a natural stream, or of a reservoir which requires the use of a natural stream channel, shall neglect or refuse to put in such measuring device after ten (10) days' notice by the state engineer, such state engineer may open the sluice-gate or outlet of such reservoir and the same shall not be closed under the penalties of the law for changing or interfering with head-gates, until the requirements of the state engineer as to such measuring devices are complied with.

Engineer or assistants may arrest violators.

SEC. 57. The state engineer or his assistants shall have power to arrest any person violating any of the provisions of this act, and to turn them over to the sheriff, or other competent police officer within the county, and immediately on delivering any such person so arrested into the custody of the sheriff, it shall be the duty of said state engineer, or his assistant making such arrest to immediately, in writing, and upon oath, make complaint before the justice of the peace against the person so arrested.

Penalties for violation.

SEC. 58. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty-five dollars (\$25), nor more than two hundred and fifty dollars (\$250), together with the costs, or imprisoned in the county jail not exceeding six months, and not less than ten (10) days, or by both such fine and imprisonment.

Method of appropriation.

SEC. 59. Any corporation authorized to do business in this state, or any citizen of the United States, or any person who has legally declared his intention to become such, over the age of twenty-one years, desiring to appropriate any of the public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, shall, before performing any work in connection with such appropriation, change in place of diversion or change in manner or place of use, make an application to the state engineer for a permit to make the same; *provided*, that any person under the age of twenty-one years who has served or shall hereafter serve in the army of the United States during the present emergency shall be entitled to the same rights hereunder as others over twenty-one years of age possess; *provided further*, that no assignment of any water permit or application shall be valid for any purpose unless made to one authorized hereunder to acquire the same in the first instance.

No application shall be for the water of more than one source to be used for more than one purpose; *provided, however*, that individual domestic use may be included in any application with the other use named. Each application for a permit to appropriate water shall contain the following information:

- (a) The name and postoffice address of the applicant, and if the applicant be a corporation, the date and place of incorporation.
- (b) The name of the source from which the appropriation is to be made.
- (c) The amount of water which it is desired to appropriate, expressed in terms of cubic feet per second, except in application for permit to store water, where the amount shall be expressed in acre-feet.
- (d) The purpose for which the application is to be made.
- (e) A substantially accurate description of the location of the place at

which the water is to be diverted from its source, and if any of such water is to be returned to the source, a description of the location of the place of return.

(f) A description of the proposed works.

(g) The estimated cost of such works.

(h) The estimated time required to construct said works, and the estimated time required to complete the application of the water to beneficial use.

(j) The signature of the applicant or his properly authorized agent.

In addition to the foregoing, the application shall contain, if for irrigation purposes, except in case of application for permit to store water, the number of acres to be irrigated and a description by legal subdivisions, where possible, of the lands to be irrigated; if for power purposes, the vertical head under which the water will be applied, the location of the proposed power-house, and, as near as may be, the use to which the said power is to be applied; if for municipal supply, or for domestic use, the approximate number of persons to be served, and the approximate future requirements; if for mining purposes, the proposed method of applying and utilizing the water; if for stock-watering purposes, the approximate number and character of animals to be watered; if for any purpose contemplating the storage of waters, in addition to the information required in applications naming the said purpose, it shall give the dimensions and location of the proposed dam, the capacity of the proposed reservoir and a description of the land to be submerged by the impounded waters. Every application for permit to change the place of diversion, manner of use or place of use of water already appropriated, shall contain such information as may be necessary to a full understanding of the proposed change as may be required by the state engineer. All applications for permit shall be accompanied or followed by such maps and drawings and such other data as may hereafter be prescribed by the state engineer, and such accompanying data shall be considered as part of the application. *As amended, Stats. 1919, 71.*

Cited, *Bergman v. Kearney*, 241 F. 912.

Duties of engineer.

SEC. 60. Upon receipt of an application, which shall be upon a blank form to be prescribed by the state engineer, and supplied the applicant without charge, it shall be the duty of the state engineer to make an endorsement thereon of the date of its receipt, and to keep a record of the same. If upon examination the application is found to be defective, it shall be returned for correction or completion with advice of the reasons therefor, and the date of the return thereof shall be endorsed upon the application and made a record of his office. No application shall lose its priority of filing on account of such defects; *provided*, the application, properly corrected and accompanied by such maps and drawings as may be required, is filed in the office of the state engineer within sixty (60) days from the date of said return to applicant. Any application returned for correction, or completion, not refiled in proper form within the said sixty days shall be canceled. All applications which shall comply with the provisions of the act shall be recorded in a suitable book kept for that purpose.

Publication of notice of application.

SEC. 61. When any application is filed in compliance with this act the state engineer shall, within thirty (30) days, at the expense of the applicant, to be paid in advance as herein provided, publish or cause to be published, in some newspaper having a general circulation, and printed

and published in the county where such water is sought to be appropriated, a notice of the application, which shall set forth that said application has been filed, the date of said filing, the name and address of the applicant, the name of the source from which the appropriation is to be made, the location of the place of diversion, and the purpose for which said water is to be appropriated, to which shall be added by the publisher the date of first publication and the date of last publication. Upon proof of such publication, which must be filed within thirty (30) days from the date of the last publication, the state engineer shall pay for the same from the moneys deposited by the applicant for such purpose; *provided, however*, that if the application is canceled for any reason before it is published, the fee of ten dollars (\$10) collected for said publication, shall be returned by the state engineer to said applicant.

Protests, how conducted.

SEC. 62. Any person interested may, within thirty (30) days from the date of last publication of the said notice of application, file with the state engineer a written protest against the granting of said application, setting forth with reasonable certainty the grounds of such protest, which shall be verified by the affidavit of the protestant, his agent or attorney. On receipt of a protest, as hereinbefore provided, it shall be the duty of the state engineer to advise the applicant whose application has been protested of the fact that said protest has been filed with him, which advice shall be sent by registered mail. The state engineer shall duly consider the said protest, and may, in his discretion, hold hearings and require the filing of such evidence as he may deem necessary to a full understanding of the rights involved; *provided, however*, that no hearing thereon shall be had except after due notice by registered mail to both the applicant and protestant, which notice shall give the time and place at which the said hearing is to be held, which notice shall be mailed at least fifteen days prior to the date set for said hearing. Said hearings shall be conducted under such rules and regulations as the state engineer may make, which he is hereby empowered to make for the proper and orderly exercise of the powers conferred herein.

To approve applications, when—Fees returned, when—Proviso—Record of action.

SEC. 63. It shall be the duty of the state engineer to approve all applications made in proper form where all fees, as in this act provided, have been paid, which contemplate the application of water to beneficial use, and where the proposed use or change does not tend to impair the value of existing rights, or be otherwise detrimental to the public welfare. But where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interests, it shall be the duty of the state engineer to reject said application and refuse to issue the permit asked for. Should the state engineer refuse to issue said permit, or should the permit be issued for a less amount of water than named in the application, the state engineer shall return to the applicant the amount of the deposit for such water rights, or the balance of the amount of the deposit for which the permit was denied; *provided, however*, the fee of fifteen dollars (\$15) for examining, filing and publishing said application shall not be included in the amount returned, except as herein provided.

The refusal or approval of an application shall be endorsed on a copy of the original application, and a record made of such endorsement in the records of the office of the state engineer; said copy of the application so endorsed shall be returned to the applicant. If approved, the applicant

shall be authorized, on receipt thereof, to proceed with the construction of the necessary works and to take all steps required to apply the water to beneficial use and to perfect the proposed appropriation. If the application is refused, the applicant shall take no steps toward the prosecution of the proposed work or the diversion and use of the public water so long as such refusal shall continue in force.

What state engineer may require.

SEC. 64. Before either approving or rejecting the application, the state engineer may require such additional information as will enable him to properly guard the public interest, and may in case of application proposing to divert more than ten cubic feet per second of water require a statement of the following facts: In case of incorporated companies he may require the submission of the articles of incorporation, and names and the places of residence of directors and officers, and the amount of its authorized and of its paid-up capital. If the applicant is not an incorporated company, he may require a statement as to the name or names of the party or parties proposing to construct the work, and a showing of facts necessary to enable him to determine whether or not they have the financial ability to carry out the proposed work, and whether or not the said application has been made in good faith.

To fix time of beginning construction—Extension, when—Proviso.

SEC. 65. In his endorsement of approval upon any application the state engineer shall set a time prior to which actual construction work shall begin, which shall not be more than one year from the date of such approval; and that work shall be prosecuted diligently and uninterruptedly to completion unless temporarily interrupted by the elements; a time prior to which the construction of the said works must be completed, which shall be within five years of the date of such approval, and a time prior to which the complete application of water to a beneficial use must be made, which time shall not exceed ten years from the date of the said approval. He may limit the applicant to a less amount of water than that applied for, to a less period of time for the completion of work, and a less period of time for the perfecting of the application than named in the application. The state engineer shall have authority, for good cause shown, to extend the time within which construction work shall begin, within which construction work shall be completed, or water applied to a beneficial use, under any permit therefor issued by said state engineer; *provided, however*, that application for such extension must in all cases be made prior to the time set in the application limiting the period which it is desired to extend.

Applications may be assigned—Restrictions.

SEC. 66. Any application for permit, or any permit to appropriate water, may be assigned subject to the conditions of the permit, but no such assignment shall be binding except between the parties thereto, unless filed for record in the office of the state engineer.

Statements of progress to be filed—Failure to file statements, penalties for.

SEC. 67. It shall be the duty of any person holding a permit from the state engineer, on or before thirty (30) days after the date set for the commencement of work as endorsed thereon, and at other times required by the state engineer, to file with the state engineer the statement setting forth the time when, the place where, and the amount of such work as may have been performed by him thereunder in connection with such appropriation, and it shall be the further duty of the applicant within

thirty (30) days after the date set for the completion of such work to file, in detail, a description of said works as actually constructed, which statement shall be verified by the affidavit of the applicant, his agent, or his attorney.

Should any applicant fail, prior to the date set for such filing in his permit, to file with the state engineer proof of commencement of work, or should the said applicant fail to file within thirty (30) days of the date set prior to which proof of completion of the work must be made, said proof of completion of work, as hereinbefore provided, the state engineer shall, in either case, advise the holder of said permit, by registered mail, that the same is held for cancelation, and should the said holder within thirty (30) days after the mailing of such advice fail to file the required affidavit with the state engineer, the said permit shall be canceled and no further proceedings shall be had thereunder; *provided, however, that for good cause shown, upon application made prior to the expiration of the period for filing said instrument, the state engineer may, in his discretion, grant a further extension of time in which to file said instruments.*

May require proofs of good faith.

SEC. 68. If, in the judgment of the state engineer, the holder of any permit to appropriate the public water is not proceeding in good faith and with reasonable diligence to perfect said appropriation, the state engineer may require at any time the submission of such proof and evidence as may be necessary to show a compliance with the law, and the state engineer shall, after duly considering said matter, if, in his judgment, the said holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the said appropriation, cancel the said permit, and advise the holder of said permit of said cancelation.

Statement on application—Form and procedure.

SEC. 69. On or before the date set in the endorsement of a permit for the application of water to beneficial use, or on the date set by the state engineer under a proper application for extension therefor, it shall be the duty of any person holding a permit from the state engineer to appropriate the public waters of the State of Nevada, to change the place of diversion, or the manner or place of use, to file with the state engineer a statement under oath, on a form prescribed by the state engineer, which statement shall include:

- (1) The name and postoffice address of the person making such proof.
- (2) The number and date of the permit for which proof is made.
- (3) The source of water supply.
- (4) The name of the canal or other works by which the water is conducted to the place of use.
- (5) The name of the original person to whom the permit was issued.
- (6) The purpose for which the water is used.
- (7) If for irrigation, the actual number of acres of land upon which the water granted in the permit has been beneficially used; giving the same by forty (40) acre legal subdivisions when possible.
- (8) An actual measurement (taken by some competent person, giving the name of said person) of the water diverted for such use.
- (9) The capacity of the works of diversion.
- (10) If for power, the dimensions and capacity of the flume, pipe, ditch or other conduit.
- (11) The average grade and the difference in elevation between the termini of such conduit.
- (12) The number of months, naming them, in which water has been beneficially used.

(13) The amount of water beneficially used, taken from actual measurements by some competent person, naming said person, together with such other data as the state engineer may require to acquaint himself with the amount of the appropriation for which said proof is filed. Accompanying said statement, there shall be filed with the state engineer a map on tracing linen on a scale of not less than one thousand feet to the inch, which shall show with substantial accuracy the following:

(1) The point of diversion by legal subdivisions or by metes and bounds from some corner, when possible, from the source of supply.

(2) The traverse of the ditch or other conduit, together with cross-sections of same.

(3) The legal subdivisions of the land embraced in the application for permit and the outline by metes and bounds of the irrigated area, with the amount thereof.

(4) The average grade and the difference in elevation of the termini of the conduit, and the carrying capacity of same.

(5) The actual quantity of water flowing in the canal or conduit during the time said survey was being made.

Said map must bear the affidavit of the surveyor or engineer making such survey and map. In the event the survey and map are made by different persons the affidavit of each must be on the map, showing that the map as compiled agrees with said survey. Said map shall conform with such rules and regulations as the state engineer shall make, which rules shall not be in conflict herewith.

Should any applicant fail, prior to the date set for such filing in his permit, to file with the state engineer proof of application of water to beneficial use, and the accompanying map, or prior to such extension as the state engineer may grant, the state engineer shall advise the holder of said permit, by mail, that the same is held for cancelation, and should the said holder within thirty days after the mailing of such advice fail to file the required affidavit and map or either of them with the state engineer, the said permit shall be canceled and no further proceedings shall be had thereunder.

May refuse faulty map.

SEC. 70. The state engineer may, in his discretion, refuse to accept for filing, any map not conforming with the foregoing provisions and such rules and regulations as he may make. He may, in his discretion, require additional data to be placed thereon, and may make proper provision therefor.

Penalty for false swearing.

SEC. 71. Should it be found upon inspection of the premises by the state engineer that said surveyor or engineer had sworn falsely to said map and survey, he may, in the discretion of the state engineer, be barred from the further practice of engineering in any matters before the state engineer, in addition to the penalties prescribed by law for swearing falsely to any affidavit.

Certificate issued by engineer—Filed, where.

SEC. 72. As soon as practicable after satisfactory proof has been made to the state engineer that any application to appropriate water has been perfected in accordance with the provisions of this act, said state engineer shall issue to said applicant, his assign or assigns, a certificate setting forth the name and postoffice address of the appropriator, his assign or assigns, date, source, purpose and amount of appropriation; and if for irrigation, a description of the irrigated lands by legal subdivisions, when possible, to which said water is appurtenant, together with the number of the permit

under which such certificate is issued, which certificate shall, within thirty (30) days after its issuance, be sent by mail to the recorder of the county in which such water is diverted from its source, as well as to the recorder of the county in which the water is used, to be recorded in books specially kept for that purpose, and the fee for recording such certificate, which is hereby fixed in the sum of one dollar (\$1) for each county in which said record is made, shall be paid in advance to the state engineer by the party in whose favor the certificate is issued.

Fees.

SEC. 73. The following fees shall be collected by the state engineer in advance, and shall be accounted for and paid by him into the general fund of the state treasury, once each month; *provided, however*, that the fees named in subdivision (c) of this section shall not apply to permits for underground waters; *and provided further*, that five dollars shall be the minimum fee for issuing and recording any permit:

(a) For examining and filing an application for permit to appropriate water, fifteen dollars (\$15), which shall include the cost of publication, which publication fee is hereby fixed at ten dollars (\$10).

(b) For examining and filing an application for permit to change the point of diversion, manner of use, or place of use, twenty-five dollars (\$25), which shall include the cost of permit should the same issue thereunder, and the cost of publication of such application.

(c) For issuing and recording permit to appropriate water for irrigation purposes, five cents per acre for each acre to be irrigated, up to and including one hundred acres, and three cents for each acre in excess of one hundred acres, up to and including one thousand acres, and two cents for each acre in excess of one thousand acres.

(d) For issuing and recording permit for power purposes, twenty-five cents for each theoretical horsepower to be developed up to and including one hundred horsepower, and fifteen cents for each horsepower in excess of one hundred horsepower, up to and including one thousand horsepower, and ten cents for each horsepower in excess of one thousand.

(e) For issuing and recording permit to store water, two cents for each acre-foot of water to be stored, up to and including one thousand acre-feet, and one cent for each acre-foot in excess of one thousand.

(f) For issuing and recording permit to appropriate water for any other purpose, \$5 for each second-foot of water applied for, or fraction thereof.

(g) For filing secondary permit under reservoir permit, \$5; for approving and recording permit under reservoir permit, \$5.

(h) For filing proof of commencement of work, \$1.

(i) For filing proof of completion of work under any permit, \$1.

(j) For filing any protest, affidavit, or any other water-right instrument or paper, \$1.

(k) For making copy of any document recorded or filed in his office, one dollar for the first hundred words, and twenty cents for each additional one hundred words or fraction thereof; where the amount exceeds \$5, then only the actual cost in excess of that amount shall be charged.

(l) For certifying to copies of documents, records, or maps, one dollar for each certificate.

(m) For blue-print copy of any drawing or map, ten cents per square foot.

(n) For such other work as may be required of his office, actual cost of the work. *As amended, Stats. 1915, 383.*

Seal.

SEC. 74. The state engineer is hereby empowered and directed to procure, for his said office, a seal upon which shall appear his official title, and

such other suitable inscription as he may deem proper, and such seal shall be affixed to all official permits, certificates and other documents issued by him under the provisions of this act.

Aggrieved party may have order reviewed, how.

SEC. 75. Any person feeling himself aggrieved by any order or decision of the state engineer, acting in person or through his assistants or the water commissioners, affecting his interests, when such order or decision relates to the administration of determined rights or is made pursuant to sections 52 to 88, inclusive, of this act, may have the same reviewed by a proceeding for that purpose, in so far as may be in the nature of an appeal, which shall be initiated in the proper court of the county in which the matters affected or a portion thereof are situated. The proceedings in every case shall be heard and tried by the court, and shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. And no such proceeding shall be entertained unless notice thereof, containing a statement of the substance of the order or decision complained of, and of the manner in which the same injuriously affects the petitioner's interests, shall have been served upon the state engineer, personally or by registered mail, at his office at the state capitol within thirty days following the rendition of the order or decision in question. A similar notice shall also be served personally or by registered mail upon the person or persons who may have been affected by such order or decision. Where evidence has been filed with, or testimony taken before, the state engineer, acting as aforesaid, a transcribed copy thereof, or of any specific part of the same, duly certified as a true and correct transcript in the manner provided by law, shall be received in evidence with the same effect as if the reporter were present and testified to the facts so certified. A copy of said transcript shall be furnished on demand, at actual cost, to any person affected by such order or decision, and to all other persons on payment of a reasonable amount therefor, to be fixed by the state engineer. No bond shall be required except a stay is desired, and the proceedings herein provided for shall not be a stay unless, within five days following the service of notice thereof, a bond shall be filed in an amount to be fixed by the court, with sureties satisfactory to such court, conditioned to perform the judgment rendered in such proceedings. Costs shall be paid as in civil cases brought in the district court, except by the state engineer or the state; and the practice in civil cases shall apply and be consistent with the informal and summary character of such proceedings, as herein provided. Appeals may be taken to the supreme court from the judgment of the district court in the same manner and with the same effect as in other civil cases, except that notice of appeal must be served and filed within sixty days from the entry of judgment. The decision of the state engineer shall be *prima facie* correct, and the burden of proof shall be upon the party attacking the same. Whenever it shall appear to the state engineer that any litigation, whether now pending or hereafter brought, may adversely affect the rights of the public in water, it shall be his duty to request the attorney-general to appear and protect the interests of the state. *As amended, Stats. 1915, 384.*

Cited, *Bergman v. Kearney*, 241 F. 889, 890.

Reservoir permits, regulations concerning.

SEC. 76. All applications for reservoir permits shall be subject to the provisions of sections 59 to 74, both inclusive, except those sections wherein proof of beneficial use is required to be filed; but the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for permit to be known herein as the

secondary permit, in compliance with the provisions of sections 59 to 74, both inclusive, except that no notice of such application shall be published. Said application shall refer to said reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owner of the reservoir for a permanent and sufficient interest in such reservoir, to impound enough water for the purpose set forth in said application.

When beneficial use has been completed and perfected under the secondary permit, and after the holder thereof shall have made proofs of the commencement and completion of his work, and of the application of water to beneficial use, as in the case of other permits, as provided in this act, final certificate of appropriation shall issue as other certificates are issued, except that said certificate shall refer to both the works described in the secondary permit and the reservoir described in the primary permit.

Use of bed of stream, how regulated—Expenses, how met.

SEC. 77. Whenever the owner, manager or lessee of a reservoir constructed under the provisions of this act shall desire to use the bed of a stream or other watercourse for the purpose of carrying stored or impounded water from the reservoir to the consumer thereof, he shall, in writing, notify the state engineer, and the water commissioner of the district in which said water is to be used, giving the date when it is proposed to discharge water from said reservoir, its volume, and the names of all the persons and ditches entitled to its use, and it shall then be the duty of the said state engineer, or his assistant, to regulate the said works and head-gates, of all ditches from the stream or watercourse not entitled to the use of such stored water as will enable those having the right to secure the volume to which they are entitled. The state engineer shall keep a true and distinct account of the time spent by him in the discharge of his duties, as defined in this section, and to present a certified statement thereof to the county commissioners of the county wherein the expense is incurred. Said county commissioners shall present a bill for the expense so incurred to the reservoir owner, manager or lessee, and if such owner, manager, or lessee shall neglect for thirty (30) days after the presentation of such bill of costs, to pay the same, the said costs shall be made a charge upon the said reservoir and shall be collected as delinquent taxes until payment of such bill of costs has been made.

Legal advisers of state engineer.

SEC. 78. The attorney-general and the district attorney of the county in which legal questions arise, shall be the legal advisers of the state engineer and shall perform any and all legal duties necessary in connection with their work without any further compensation than their salaries fixed by law.

Share of expenses, how collected.

SEC. 79. In all cases where ditches are owned by two or more persons, and one or more of such persons shall fail or neglect to do a proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches, or to construct suitable head-gates, or other devices at the point where water is diverted from the main ditch, such owner or owners desiring the performance of such work, may, after giving ten days' written notice to such other owner or owners who have failed to perform such proportionate share of the work necessary for the operation and maintenance of said ditch or ditches, perform such share of the work, and recover therefor from such person or persons in default, the reasonable expense of such work.

Expenses a lien.

SEC. 80. Upon the failure of any coowner to pay his proportionate share of such expense, as mentioned in the preceding section, within thirty days after receiving a statement of the same as performed by his coowner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county clerk of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons in default, which said lien may be established and enforced in the same manner as provided by law for the enforcement of mechanics' liens.

Evidence of guilt.

SEC. 81. The unauthorized use of water to which another person is entitled, or the wilful waste of water to the detriment of another, shall be a misdemeanor, and the possession or use of such water without legal right, shall be prima facie evidence of the guilt of the person using or diverting it.

Obstruction unlawful.

SEC. 82. Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of his works, or prevent convenient access thereto. Any violation of the provisions of this section shall be a misdemeanor.

Penalty for violation.

SEC. 83. All violations of the provisions of this act declared herein to be a misdemeanor, shall be punished by a fine not exceeding two hundred and fifty dollars (\$250), and not less than ten dollars (\$10), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Vested rights not impaired.

SEC. 84. Nothing in this act contained shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this act where appropriations have been initiated in accordance with law prior to the approval of this act. Any and all appropriations based upon applications and permits now on file in the state engineer's office, shall be perfected in accordance with the laws in force at the time of their filing.

The provisions of this section do not limit the power of the state engineer to determine for administrative purposes relative rights of water appropriators or users vested prior to the passage of the act, and to administer such prior acquired rights in accordance with such determinations subject to remedy by the courts for errors in determinations. *Ormsby County v. Kearney*, 37 Nev. 315, et seq. (142 P. 803).

It was the purpose of the legislature, particularly emphasized in this section, to recognize appropriations made under former laws or legislative acts, and to keep those appropriations free from being affected or impaired by anything contained in the water law of 1913. *Ormsby County v. Kearney*, 37 Nev. 317, et seq. (142 P. 803) (McCarran, J., dissenting opinion).

Cited, *Bergman v. Kearney*, 241 F. 886.

Rotation in use.

SEC. 85. To bring about a more economical use of the available water supply, it shall be lawful for water users owning lands to which water is

appurtenant, to rotate in the use of the supply to which they may be collectively entitled; or a single water user, having lands to which water rights of a different priority attach, may in like manner rotate in use, when such rotation can be made without injury to lands enjoying an earlier priority, to the end that each user may have an irrigation head of at least two (2) cubic feet per second.

Engineer to make rules and regulations.

SEC. 86. The state engineer is hereby empowered to make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred by this act.

Each section declared independent.

SEC. 87. Each section of this act and every part of each section is hereby declared to be independent sections, and parts of sections, and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to affect any other section or any part thereof.

Specified acts repealed.

SEC. 88. All acts designated in the following schedule, and all other acts and parts of acts in conflict herewith, shall stand repealed from and after the time when this act goes into effect.

SCHEDULE

An act to provide for the appropriation, distribution and use of water, and to define and preserve existing water rights, to provide for the appointment of a state engineer, an assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners and defining their duties, approved February 26, 1907.

An act amendatory of a certain act entitled "An act to provide for the appropriation, distribution and use of water, and to define and preserve existing rights, to provide for the appointment of a state engineer and assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners, and defining their duties," approved February 26, 1907, and to provide a fee system for the certification of the records of, and an official seal for, the state engineer's office, and other matters relating thereto, approved February 20, 1909.

The repeal of a law by this act shall not affect any application for permit made to, or permit granted by, the state engineer to appropriate the public water when any such instrument was filed or approved before the repeal takes effect, and any action or proceeding heretofore commenced or initiated under any law repealed by this act, shall be completed in accordance with the provisions of the law in force at the time of such filing and approval.

What admissible as evidence.

SEC. 88A. Any and all maps, plats, surveys, and evidence on file in the office of the state engineer relating to any proof of appropriation involved in the proceedings for the determination of the relative rights in and to the waters of any stream system, obtained or filed under the provisions of this or any preceding act relating to the office of state engineer, shall be admissible in court and shall have the same force and effect as though obtained and submitted under the provisions of this act as amended; *provided*, that at least ninety days prior to the rendering of his order of determination of the relative rights in and to the waters of any stream system, the state engineer shall notify all parties in interest of his intention to consider such maps, plats, and evidence, and of his intention to submit his findings

to the court under the provisions of this act as amended; such notice to be given in the manner prescribed in section 22 of this act. Within sixty days after such notice, any such party in interest may file with the state engineer any additional or supplementary maps, plats, surveys, or evidence, or objections to the admissibility of any evidence hitherto presented and on file in the office of the state engineer, in relation to his claim of water right or adverse to the claim or claims of the water right of any other party or parties in interest, in order so to perfect his claim in accordance with the provisions of this amended act, and the state engineer shall consider the whole thereof in rendering such order of determination, and the same shall become a part of the record which shall be submitted to the court as provided by sections 34 to 39, inclusive, of this act. *Added, Stats. 1915, 385.*

Cited, *Bergman v. Kearney*, 241 F. 890.

Relative rights submitted.

SEC. 88B. In all cases where the state engineer has already issued findings declaring the relative rights of appropriators in and to the waters of any stream system, the same may be submitted to the court under the provisions of sections 34 to 39, inclusive, of this act.

Cited, *Bergman v. Kearney*, 241 F. 890.

Engineer, member and secretary state board of irrigation.

SEC. 88C. The state engineer is hereby made a member of the state board of irrigation and shall act as secretary of such board. *Added, Stats. 1915, 385.*

This act making water for beneficial purposes appurtenant to the place of use, unless it becomes impracticable to beneficially use water at the place, in which case the right may be severed and transferred, and become appurtenant to another place, does not affect the rights acquired by one obtaining, for several years prior to the act, water for irrigation from a water company engaged in selling water for irrigation. *Prosser v. Steamboat Canal Co.*, 37 Nev. 154, 158, 160 (140 P. 720; 144 P. 944).

Questions presented in certain of the provisions of sections 18 to 51, inclusive, such as whether the determinations made by the state engineer have any force other than as being controlling for purposes of the administration of the law, until modified, suspended, or set aside by some order or decree of the court, or whether the methods prescribed for appeal from the decisions of the state engineer in cases of contest are valid, are unnecessary to be determined in this case, and will not be considered under the rule that constitutional questions not essential to a determination of the case will not usually be determined. *Ormsby County v. Kearney*, 37 Nev. 315, et seq. (142 P. 803).

The provisions generally of sections 18 to 51, inclusive, of this law, considered for purposes of administration, are not violative of article 3 of the state constitution, dividing the state government into three coordinate departments. *Id.*

The provisions of sections 18 to 51, inclusive, are not violative of section 6 of article 6 of the constitution fixing the appellate and original jurisdiction of district courts in that the determinations made by the state engineer of the relative rights of water users are not made in "cases in equity" or "cases at law" as those terms are used in said section. *Id.*

In so far as this law authorizes the state engineer to investigate and determine the relative rights of water appropriators or users upon any stream or stream system, or require statements to be made by the several claimants of their respective claims, and require such claimants to support the same with proofs, and authorizes the state engineer to determine contests, or authorizes the control of the distribution of the waters of a stream to the person found to be entitled thereto, the law is valid. *Id.*

Assuming the establishment of the relative rights of water users on a stream system, no constitutional right is infringed by a system of a state control such as is provided in sections 52-56 of this act. *Id.*

The constitutionality of sections 18 to 51 of this act should be viewed with reference to the purpose designed to be accomplished by sections 52 to 56 of said act, which latter sections are clearly administrative in character. *Id.*

The provisions of sections 18 to 51, inclusive, do not contemplate the deprivation of property without due process of law; they contemplate the securing to water users their rights, not the taking of the same away. For purposes of administration the enjoyment of such rights may be affected, but only after notice and hearing, and the right to adjudication by the courts is not taken away. *Id.*

Due process of law is not limited to judicial proceedings, but also comprehends determinations by administrative officers or boards where notice and a hearing are provided. *Id.*

The state, in the exercise of its police power to prescribe laws for the general welfare, may provide for inspection, regulation, and exercise a superintending control over the waters and watercourses of the state, and this act, giving the state engineer the right to institute proceedings to determine the rights of the owners and persons controlling water rights in the state, if construed as administrative only, and not to impair vested rights, is valid. *Id.*

This act providing for the establishment of water rights in proceedings before the state engineer, and authorizing such administrative officer to make decrees which, in the absence of appeal, are declared final, in so far as it attempts to make such decrees conclusive on the parties, is unconstitutional as impairing the constitutional power of the judiciary, under Const. art. 6, sec. 1, declaring that the judicial power of the state shall be vested in certain specified courts. *Id.*

Sections 18 to 51, inclusive, of this act are unconstitutional and void in that they attempt to invest the state engineer with power to affect or destroy the property rights of water appropriators or users in violation of the due-process-of-law provisions of the federal and state constitutions, and because they attempt to invest the state engineer with judicial powers reposed in the courts, in violation of article 3, section 1, and article 6, sections 1-6, of the state constitution. *Id.* (McCarran, J., dissenting opinion.)

Courts of a state which have adopted a statute from another state, after it has been construed by the courts of that state, are not bound by such construction, where the organic law of the two states differs in essential particulars affecting the law in question, or where the laws are not identical, or where the circumstances of the adopting state are essentially different. Held, also, that this law differs in essential particulars from the water laws of Wyoming and Nebraska, and that the constitutions of those states also differ in material particulars, hence, this court is not bound by the decision of the highest courts of those states construing the provisions of their water laws. *Id.* (McCarran, J., dissenting opinion.)

This law as amended by Stats. 1915, 378, there being provision for notice, is not violative of federal Const. Amend. 14, prohibiting the taking of property without due process of law. *Vineyard Land and Stock Co. v. District Court*, 42 Nev. 1-3, 11-15, 22, 28-64 (171 P. 166).

It is not the rule in Nevada that there can be no due process of law unless the methods, means and instrumentalities which were in existence at the time of the adoption of the Nevada constitution are adhered to. *Id.*

This law is not violative of Const. art. 6, sec. 6, since the entire proceedings under the water law amount to nothing until a copy of the order of determination of water rights of the state engineer is filed in the office of the clerk of the district court, thus operating as a complaint, the proceedings before the state engineer being nothing more than the routine of preparing and filing the complaint in the district court, which invests the latter court with jurisdiction to act. *Id.*

Rev. Laws, 4677, and the Water Law, Stats. 1913, 192, provide that in all measurements of water a cubic foot of water per second of time shall be the standard of measurement. Plaintiff sued defendant to have it adjudged that he was the owner of three-eighths of the water of a creek, and the court so decreed and enjoined defendant from diverting such three-eighths of the water or any part thereof from the stream. Held, that the decree was too uncertain as to the quantity of water to which plaintiff was entitled, but should use the standard of measurement described by the statute or some measurement readily translatable therein. *Ramelli v. Sorgi*, 38 Nev. 552, 558 (149 P. 71).

This law, as amended, is not violative of Const. art. 3, sec. 1, and art. 6, sec. 1, providing that the powers of government shall be divided into three separate departments, the legislative, executive, and judicial, and that the judicial power of the state shall be vested in a supreme court, district courts, and justices of the peace, the act not conferring judicial powers on the state engineer, since the procedure before him merely paves the way for an adjudication by the district court. *Id.*

This law is not violative of Const. art. 6, sec. 1, since the law does not contemplate or suggest the taking of private property for any public or any other use. *Id.*

This law as amended providing that from and after the filing of the state engineer's order of determination with the clerk of the district court, and during the hearing thereof, the waters of the stream in question may be distributed as indicated in the order of determination, unless a stay bond be given, is not unconstitutional. *Id.*

This law as amended is not unconstitutional, as permitting a taking of property without due process of law, in that, should an interested party fail to file objections, to the determination of the state engineer as to water rights, with the clerk of the district court in which the engineer files a copy of his order of determination, and the court enters a decree in accordance with such order, such decree would be tantamount to a taking of property without due process. *Id.*

This law as amended by Stats. 1915, c. 253, in providing that existing water rights acquired before its passage shall be ascertained and determined first by the state engineer and afterward by the district court as therein prescribed, is not unconstitutional, as depriving the holders of vested rights; but such provision is a proper and necessary one, to enable the state to ascertain and delimit new rights to be acquired under the act and is within the legislative power. *Bergman v. Kearney*, 241 F. 884-886, 890, 896, 903, 906, 907.

Appropriation for use of water from a stream, although the rights acquired thereby are recognized by both federal and state governments, is subject to regulation and control by the state, which in the exercise of its police power may provide efficient regulations covering the distribution and use of such water. *Id.*

Under this law it was held that provisions for hearing and determination by the state engineer are not in violation of art. 3, sec. 1, of the state constitution, as conferring judicial power on an administrative officer, since his determination has none of the finality of a judgment but is merely a preliminary step in the proceeding which culminates in a final decree of the district court. *Id.*

See *Vineyard Land and Stock Co. v. District Court*, 42 Nev. 1-3, 11-15, 20-64 (171 P. 166), under Stats. 1913, 192.

Cited, *Bergman v. Kearney*, 241 F. 884, 885, 890, 896, 900.

4723-4791. Repealed, so far as inconsistent with the provisions of chap. 64, Stats. 1919, 84, Stats. 1919, 114.

4723. Irrigation districts, how organized.

SECTION 1. Whenever a majority of the holders of title, or evidence of title, to lands susceptible of one mode of irrigation from a common source or combined sources, and by the same system or combined system of works, desire to provide for the irrigation of the same, or, when for drainage purposes and other reasons, they desire to organize the proposed territory into one district, or if they desire to cooperate with the United States under the federal reclamation laws for the purpose of construction of irrigation works, including drainage works, or for the purchase, extension, operation or maintenance of constructed work or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands, they may propose the organization of an irrigation district under this act; *provided*, said holders of title, or evidence of title, shall hold such title, or evidence of title, to at least one-half part of the total area of the land in the proposed district; *provided, further*, that no person shall be a competent signer of a petition provided in this act for

the formation of an "irrigation district" who is not the holder of a title or evidence of title to not less than five acres of land irrigated or susceptible of irrigation from the said common source of water supply, which shall be accessible for the purpose of the district. The equalized county assessment roll next preceding the presentation of a petition for the organization of an irrigation district shall be sufficient evidence of title for the purpose of this act, but other evidence may be received, including receipts or other evidence of rights of entrymen on land under any law of the United States or this state, and such entrymen shall be competent signers of such petition, and the land on which they have made entries shall, for the purpose of said petition, be considered as owned by them. And such entrymen shall share all the privileges and obligations of freeholders and owners of private land within the district, under the several provisions of this act, including the right to vote and hold office subject to the terms of the act of Congress entitled "An act to promote reclamation of arid lands," approved August 11, 1916. The petitioners may determine in said petition whether the proposed district shall be divided into three, five, or seven divisions, and whether it shall have three, five, or seven directors, but if no number is named in the petition, the board of county commissioners may determine whether the number shall be three, five, or seven. *As amended, Stats. 1915, 434; 1917, 255.*

4725. That section 3 of the above-entitled act is amended to read as follows; *provided*, that the number of directors and the number of divisions of districts organized prior to the passage of this amendment shall not be altered or changed except by petition of two-thirds of the qualified electors of said district and a majority vote of the directors:

Commissioners to define boundaries—Proviso—Contiguous lands—Elections—Officers.

SEC. 3. When such petition is presented, and it shall appear that the notice of the presentation of said petition has been given as required by law, and that said petition has been signed by the requisite number of petitioners as required by this act, the commissioners shall then proceed to define the boundaries of said proposed district from said petition and from such application for the exclusion of lands therefrom and inclusion of lands therein as may be made in accordance with the provisions of this act. The said commissioners may adjourn such examination from time to time not exceeding three weeks in all and shall, by final order duly entered, define and establish the boundaries of such proposed district; *provided*, that said board shall not modify such proposed boundaries described in the petition so as to change the object of said petition or so as to exempt from the operation of this act any land within the boundaries proposed by the petition susceptible to irrigation by the same system of water-works applicable to other lands in such proposed district; *provided, also*, that contiguous lands not included in such proposed district, as described in the petition, may, upon application of the owner or owners thereof, be included in such district upon such hearing; *provided*, that in the hearing of any such petition the board of county commissioners shall disregard any informalities therein, and in case they deny the same, or dismiss it for any reasons on account of the provisions of this act not having been complied with, which are the only reasons upon which they shall have a right to refuse or dismiss the same, they shall state their reasons in writing therefor in detail, which shall be entered upon their records, and in case the reasons are not well founded, a writ of mandamus shall, upon proper application therefor, issue out of the district court of said county, compelling them to act in compliance with this act, which writ shall be heard

within twenty days from the date of issuance, and which twenty days shall be excluded from the forty days given the commissioners herein to act upon said petition.

When the boundaries of any proposed district shall have been examined and defined as aforesaid, the county commissioners shall forthwith make an order allowing the prayer of said petition, defining and establishing the boundaries and designating the name of such proposed district, and also divide such district into three, five, or seven divisions, as named in the petition as nearly equal in size as may be practicable, and one director, who shall be a landholder and qualified elector in the division, shall be elected as a director, from such division, by the freeholders who are also qualified electors in the proposed district at large. No more than one person shall be elected as a director from one and the same division of such district. Thereupon the said commissioners shall by further order duly entered upon their record call an election of the landholders, who are also qualified electors of said district, to be held for the purpose of determining whether such district shall be organized under the conditions of this act, and by such order shall submit the names of one or more persons from each of the divisions of said district as herein provided, to be voted for as directors therein. Each of said divisions shall constitute an election district for the purpose of this act. Said board of county commissioners shall then give notice of such election to be held in such proposed district, which notice shall be published for three weeks prior to such election in a newspaper within the county or counties within which such proposed district lies. Such notice shall require the said electors to cast ballots which shall contain the words "Irrigation District—Yes" or "Irrigation District—No," or words equivalent thereto, and also the names of persons to be voted for to fill the various elective offices by this act provided for. For the purpose of this election above provided for, the said board of county commissioners must establish a convenient number of election precincts and polling places in said proposed districts and define the boundaries thereof, which said precincts may thereafter be changed by the board of directors of such district, and shall also appoint the judges of election for such precinct, one of whom shall act as clerk of the election.

The officers of such district shall consist of three, five, or seven directors, as aforesaid, a secretary and a treasurer, who shall be appointed by the board of directors.

Any person, male or female, of the age of twenty-one years or over, whether a resident of the district or not, who is a bona-fide holder of title or evidence of title as defined in section 1 hereof, to land situated in the district, shall be entitled to vote at any election held under the provisions of this act, but at any election upon the question of a proposed bond issue, contract with the United States or any election to authorize indebtedness, each qualified voter shall be entitled to cast one vote for each dollar, or major fraction thereof, of benefit or assessment apportioned to his land as shown in the apportionment of benefits under the proposed contract or bond issue as herein required to be made, filed and published prior to the election, and at any such election a member of the election board shall indorse on the ballot of each elector the number of votes to which he is entitled, and his ballot shall be counted as the number of votes so indorsed thereon. Any elector residing outside of the district owning land in the district and qualified to vote at district elections shall be considered as a resident of that division and precinct of the district in which the major portion of his lands are located for the purpose of determining his place of voting and qualifications for holding office; *provided*, that the number of directors and the number of divisions of districts organized prior to the

passage of this amendment shall not be altered or changed except by petition of two-thirds of the qualified electors of said district and a majority vote of the directors. *As amended, Stats. 1917, 256.*

4726. Elections, how conducted—New districts, when.

SEC. 4. Except as in this act otherwise provided, all such elections shall be conducted as nearly as practicable in accordance with the general election laws of this state. The said board of county commissioners shall meet on the second Monday succeeding such election and proceed to canvass the votes cast thereat, and if, upon such canvass, it appears that at least a majority of said legal electors in said district voting at such election have voted "Irrigation District—Yes" the said board shall, by an order entered on their minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices, to be duly elected to such office. Said board shall cause a copy of such order, including a plat of said district duly certified by the clerk of the board of county commissioners, to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands are situated, and no board of county commissioners of any county, including any portion of such district, shall, after the date of organization of such district, allow another district to be formed, including any of the lands of such district, without the consent of the board of directors thereof, and from and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall immediately enter upon the duties of their respective offices, upon qualifying, in accordance with the law, and shall hold such offices, respectively, until their successors are elected and have qualified. *As amended, Stats. 1917, 258.*

4727. Regular district elections, when—Terms of directors—Qualifications—Oath and bond.

SEC. 5. The regular election of said district shall be held on the first Tuesday after the first Monday in April biennially thereafter, at which shall be elected one director by the electors of the district at large; *provided*, in districts already organized where directors have been elected in conformity with existing laws, no election shall be held until the year 1916; *provided further*, the directors elected at the organization election, heretofore held or held hereafter, shall be selected by lot, so that if there be three directors one shall hold his office for the term of two years, and two for the term of four years, but if there be five directors then two shall hold office for the term of two years, and three for the term of four years, and if there be seven directors then three shall hold office for the term of two years, and four for the term of four years, and an election shall be held in each district biennially thereafter, at which one, two, three, or four directors as may be necessary to replace the directors whose terms expire, shall be elected for a term of four years, or until their successors are elected and qualify. Such director must be a qualified elector and a freeholder of the division of the director whom he is to succeed in office. Within ten days after receiving the certificates of election hereinafter provided for, such officer shall take and subscribe to an official oath and file the same in the office of the board of directors, and execute the bond hereinafter provided for. Each member of said board of directors shall execute an official bond in the sum of seven thousand five hundred dollars (\$7,500), which said bonds shall be approved by the judge of the district court in and for said county where such organization is effected, and shall be recorded in the office of the county recorder thereof and filed with the secretary of said

board. All official bonds provided for in this act shall be in the form prescribed by law; *provided*, that in case any district organized under this title is appointed fiscal agent of the United States, or by the United States is authorized to make collection of moneys for and on behalf of the United States in connection with any federal reclamation project, each such director shall execute a further and additional bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his office, and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization, and any such bond may be sued upon by the United States or any person injured by the failure of such director or the district to fully, promptly, and completely perform their respective duties. *As amended, Stats. 1915, 435; 1917, 258.*

4728. Office, where—Election notices—Procedure—Registration.

SEC. 6. The office of the board of directors shall be located in the county where the organization was effected. Fifteen days before any election held under this act, subsequent to the organization of the district, the secretary, who shall be appointed by the board of directors, shall cause notice specifying the polling places in each election precinct to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board in said county. Prior to the time for posting the notice, the board must appoint from each precinct, from the electors thereof, three judges, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or the members appointed do not attend the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the hour and the place in the precinct where the election must be held. At least four weeks before any such election, said board of directors shall appoint a registrar for each precinct of the district, except the precinct in which the office of the secretary of the board is located. In the precinct in which his office is located, or where there is but one voting precinct in the district, the secretary of the district shall act as registrar. Such registrars shall be governed in the performance of their duties by the general election laws of the state as far as they are applicable, and must be at their places of registration, to receive applications for registration, from nine o'clock a. m. to nine o'clock p. m., on each of the three Saturdays next preceding the date of election. In addition to the usual elector's oath, the following shall be added: "As I am a holder of land within the boundaries of.....Irrigation District." No election for any purpose shall be held in any irrigation district without such registration, and only those persons duly registered shall be allowed to vote thereat; *provided*, said directors may include all of said district in one voting precinct. *As amended, Stats. 1915, 436; 1917, 259.*

4729. Further regulations regarding election.

SEC. 7. The said judge shall elect a chairman, who may administer all oaths required in the progress of an election, and appoint judges and clerks, if during the progress of an election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of the election. The board of election of each precinct must, before opening the polls, appoint two clerks to act as clerks of the election.

Before opening the polls, each member of the board and each clerk must take and subscribe to an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The time of opening and closing the polls, the manner of conducting the election, canvassing and announcing the result, the keeping of the tally-list, and the making and certifying said results, and the disposition of the ballots after election, shall be the same, as near as may be, as provided for elections under the general election law of this state; but no registrar or election officer shall receive any pay for services at any district election; *provided*, that the returns shall be delivered to the secretary of the district, and that no list, tally-paper, or certificate returns from any election, shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election to canvass the returns, and they shall proceed in the same manner and with like effect, as near as may be, as the board of county commissioners in canvassing the returns of general elections, and when they shall have declared the result, the secretary shall make full entries in his record in like manner as is required of the county clerk in general elections. The board of directors must declare elected the person or persons having the highest number of votes given for each office. The secretary shall immediately make out and deliver to such person or persons a certificate of election signed by him and authenticated with the seal of the board. In case of a vacancy in the office of the director, the vacancy shall be filled by appointment by the remaining members of the board from the division in which the vacancy occurred. An officer appointed to fill a vacancy, as above provided, shall hold his office until the next regular election of said district, at which election a director shall be elected for the remainder of the unexpired term. *As amended, Stats. 1917, 260.*

4734. Election of officers—Meetings—Additional bonds—Organization of board—Appointees.

SEC. 12. On the organization of the first board of directors of any such district, they shall designate some place within the district as the office of said board, and said board shall hold a regular monthly meeting in its office on the first Monday in every month, and any special meetings as may be required for the proper transaction of business; *provided*, that all special meetings must be ordered by the president or a majority of the board, the order must be entered of record, and the secretary must give each member not joining in the order five days' notice of such special meetings. The order must specify the business to be transacted at such special meeting, and none other than that specified shall be transacted; *provided further*, that whenever all members of the board are present, however called, the same shall be deemed a legal meeting, and any lawful business may be transacted. All meetings of the board must be public, and a majority shall constitute a quorum for the transaction of business; but on all questions requiring a vote there shall be a concurrence of at least a majority of the members of the board. All records of the board shall be open to the inspection of any elector during business hours; *provided further*, that in case any district organized under this title is appointed fiscal agent of the United States, or by the United States is authorized to make collections of moneys for and on behalf of the United States in connection with any federal reclamation project, the treasurer shall execute a further and additional official bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his office, and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such

appointment or authorization, and such further additional bond may be sued upon by the United States or any person injured by the failure of the said treasurer or of the district to fully, promptly, and completely perform their respective duties.

On the first Monday in May, next following their election, the board of directors shall meet and organize a board, elect a president from their number, and appoint a secretary and treasurer; *provided*, said board may in its discretion appoint one person to fill the offices of secretary-treasurer; *and provided further*, said appointee or appointees shall hold office during the pleasure of the board. All appointees of the board shall file bonds for the faithful performance of their duties as required by the board, it to approve the same. *As amended, Stats. 1915, 437.*

4735. Powers and duties of board.

SEC. 13. Said board shall have the power to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers, and employees as may be required, and prescribe their duties, and to establish equitable by-laws, rules and regulations, for the distribution and use of water among the owners of such land as may be necessary and just to secure the just and proper distribution of the same. Said by-laws, rules and regulations must be printed in convenient form for distribution throughout the district. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works, and the lines of any canal or canals, and the necessary branches for the same, on any lands which may be deemed best for such location. Said board shall also have the right to acquire, either by purchase, condemnation, or other legal means, all lands, rights, and other property necessary for the construction, use and supply, maintenance, repair, and improvement of said canal or canals and works, including canals and works constructed and being constructed by private owners, lands for reservoirs for the storage of needful waters, and all necessary appurtenances. In case of purchase, the bonds of the district hereinafter provided for may be used to their par value in payment.

For the purpose of acquiring control over government land within the district, and of complying with the provisions of the aforesaid act of Congress of August 11, 1916, the board shall have authority to make such investigation, and base thereon such representations and assurances to the secretary of the interior as may be requisite. Said board may appropriate water in accordance with the law, and also construct the necessary dams, reservoirs, and works for the collection of water for said district; and do any and every lawful act necessary to be done that sufficient water may be furnished to each land owner in said district for irrigation purposes. The use of all water required for the irrigation of lands of any district formed under the provisions of this act, together with the rights of way for canals and ditches, sites for reservoirs, and all other property required to fully carry out the provisions of this act, is hereby declared to be a public use, subject to the regulations and control of the state, in the manner prescribed by law.

Said board may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the federal reclamation act and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply or drainage works, under any act of Congress providing for or permitting such contract, or may provide by contract with the United

States for the release of mortgages or liens given or reserved to the United States upon district lands, and may provide for the assumption by the district, either as principal or guarantor, of indebtedness to the United States on account of district lands and apportion to each tract of land so released benefits in the amount of the obligations to the United States so provided to be released; and the contract between the district and the United States may provide for the collection and payment of indebtedness so incurred or assumed by the district and the tax or assessment for the same at the same times and in the same amounts or installments provided in the federal reclamation laws, and if so provided in the contract, such taxes and assessments shall become delinquent at the same dates provided in the act of Congress of August 13, 1914 (38 Stats. 686), known as the reclamation extension act and in that event if it be provided in the contract that the United States waives any penalties for delinquency other or greater than those named in the said act of Congress of August 13, 1914, then, instead of the penalties otherwise provided in state laws, the penalties for delinquency in the payment of that part of the tax representing the special assessment for payment of the obligations of the district to the United States shall be the penalties named in the said act of Congress of August 13, 1914, and the amount required to be paid in case of any redemption from any tax sale or tax judgment shall be determined by figuring the part thereof due to the United States upon the basis of the amount of such special assessment levied for the purpose of paying the United States plus the penalties named in said act of Congress of August 13, 1914. And the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto. All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress, the regulations of the secretary of the interior, and the provisions of said contract in relation thereto, and said contract may provide that water delivery may be denied to any delinquent land owner for non-payment of any assessment required for compliance with said contract with the United States. That any one of the several divisions of the irrigation district, desiring to secure local drains, laterals, or other structures or improvements, the benefits of which are limited to such division, may provide for the construction and operation of such local improvement in the following manner: That upon presentation to the board of directors of any irrigation district of a petition signed by a majority of the land owners of any division owning or holding title or possessory rights to at least one-fourth of the total acreage of such division, and designating two land owners of such division by the petitioners as local directors of such division, and describing in a general way the local improvements desired, the board of directors of the district shall consider such petition at a regular or special meeting, and if they find that the requirements of the law have been complied with in regard to such petition, shall appoint the two land owners designated in such petition as directors of a local board for such division, the first of such local directors named in the petition to hold office for a period of two years and the second for a period of four years, and successors to be elected by the electors of the division in like manner as the directors of the district are elected by the electors of the district. The two local directors so appointed or elected, together with the director of the district from such division, shall constitute the local board for such divisions, and may provide for the construction or operation of local drains, laterals, and other structures or improvements, the benefits of which are

confined to such division, and for the purpose of the construction and operation of such local improvements and apportionment, assessment, and payment therefor, shall have all the powers that the directors of the district are authorized to exercise in regard to the construction and operation of, and payment for, district works, and shall proceed in like manner and with like effect to submit to the electors of the division the question of authority for any proposed bond issue of such division or contract between such division with the United States, and if carried by the necessary two-thirds majority of the votes cast at the election, such local board shall proceed to have such bond issue or contract judicially reviewed and confirmed in like manner as a district bond issue, and with like effect and prior to such election in like manner shall apportion the benefits thereof to the lands of the division, and certify such apportionment to the board of directors of the district, who shall report the same to the proper county officer in like manner and effect as an apportionment of benefits made by the district, and shall likewise provide for payments of the bonds or contract or the division and the interest thereon, if any, and operation and maintenance of such local works and the payment of the local board and incidental expenses in connection therewith.

Each member of said local board shall receive a salary of three dollars per day for the time actually employed, but should such proposed bond issue or contract with the United States for such proposed local improvement fail to receive the required majority of the votes of the division at such election, then the term of office of such local directors shall thereupon terminate and said local board be dissolved. *Provided, further,* in case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at 90 per cent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States, to be applied as provided in such contracts, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment provided for in section 31, as herein amended, an amount sufficient to meet each year all payments accruing under the terms of any such contract; and the board may accept, on behalf of the district, appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto; *provided,* all water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress and the rules and regulations of the secretary of the interior, and the provisions and contract between the said district and the United States in relation thereto. *As amended, Stats. 1915, 437; 1917, 261.*

4736. Legal title vests in district—Proviso.

SEC. 14. The legal title to all property or rights acquired under the provisions of this act shall immediately by operation of law vest in such irrigation district and shall be held by such district in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this

act. Said board is hereby authorized and empowered to hold, use, acquire, manage, occupy, and possess said property and rights as herein provided; *provided, however*, that any property acquired by the district may be conveyed to the United States in so far as the same may be needed by the United States for the construction, operation and maintenance of works for the benefit of the district under any contract which may be entered into with the United States pursuant to this act. *As amended, Stats. 1917, 265.*

4740. Special election for special assessment, when.

SEC. 18. The board of directors may, at any time when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district, the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this act. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof be determined and declared, in all respects in conformity with the provisions of sections 5 and 6. The notice must specify the amount of money proposed to be raised, and the purpose for which it is intended to be used. At such elections the ballots shall contain the words "Assessment—Yes," or "Assessment—No." If two-thirds or more of the votes cast are "Assessment—Yes," the board shall immediately levy an assessment sufficient to raise the amount voted. The assessment so levied shall be computed and entered on the assessment roll by the secretary of the board and collected in the same manner as other assessments provided for herein; and when collected shall be paid into the district treasury for the purpose specified in a notice of such special election. *As amended, Stats. 1917, 265.*

4741. Power to incur debts limited—Proviso—Power to levy and collect tax.

SEC. 19. The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void; *provided*, that for the purpose of organization, or for any of the purposes of this act, the board of directors may, before the collection of the first assessment, incur an indebtedness not exceeding in the aggregate the sum of three thousand dollars, and may cause warrants of the district to issue therefor, bearing interest at six per cent per annum; *provided*, that the directors have the right and power to levy a tax of not to exceed five (5) cents the acre on all land and lands in said district for the payment of all expenses of organization and matters relating thereto; *and provided further*, that thereafter the directors have the right and power to levy a tax annually of not to exceed three (3) cents the acre on all land and lands in said district for the payment of the ordinary and current expenses of the district, including the salary of officers and other incidental expenses. After such levy is made, the secretary of the board of directors shall transmit the same to the county auditor of the county within which said district is located; the county auditor shall enter the same in the tax rolls of the county; and it shall be the duty of the county treasurer to collect such taxes at the time and in the same manner that other taxes are collected. *As amended, Stats. 1915, 439.*

4744. County commissioners to examine books.

SEC. 22. Any board of directors of any such irrigation district, or the secretary thereof, shall at any time allow any member of the board of county commissioners, when acting under the order of such board, to have

access to all books, records, and vouchers of the district which are in possession or control of said board of directors or said secretary of said board, and in case any district is appointed fiscal agent of the United States, or by the United States is authorized to make collections for or on behalf of the United States in connection with any federal irrigation project, such board of directors, or the secretary thereof, shall at any time allow any officer or employee of the United States, when acting under the order of the secretary of the interior, to have access to all books, records, and vouchers of the district which are in possession or control of the secretary or of said board. *As amended, Stats. 1915, 440.*

**4745. General plan of operation — Special election, when — Procedure—
Assessments based on benefits.**

SEC. 23. As soon as practicable after the organization of any such district, the board of directors shall, by a resolution entered on its records, formulate a general plan of its proposed operation, in which it shall state what constructive works or other property it proposes to purchase and the cost of purchasing the same; and further what construction work it proposes to do and how it proposes to raise funds for carrying out said plan. For the purpose of ascertaining the cost of any such construction work said board shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plan, and furnish the proper basis for an estimate of the cost of carrying out the same. All such surveys, examinations, maps, plans, and estimates shall be made under the directions of a competent irrigation engineer and certified by him. No such surveys, examinations, or plans need be made if it is proposed to enter into contract with the United States under the federal laws. Upon receiving said report, said board of directors shall proceed to determine the amount of money necessary to be raised, and shall immediately thereafter call a special election, at which shall be submitted to the electors of said district possessing the qualifications prescribed by this act, the question whether or not the expense shall be authorized, and whether by bond issue or otherwise. Notice of such election must be given by posting notices in three public places in each election precinct in said district at least four weeks before the date of said election, and the publication thereof for the same length of time in some newspaper published in the district, and in case no paper is published in the district then in a paper published in each county in which the district, or any part thereof, is located. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued, and, in case such maps and estimates have been made, it shall further state that copies thereof are on file and open for public inspection by the people of the district, at the office of said board. But if contract is proposed to be made with the United States and bonds are not to be deposited with the United States in connection therewith, the question to be submitted at such special election is whether contracts shall be entered into with the United States. The notice of election in such case shall state the maximum amount of money proposed to be payable to the United States for construction purposes exclusive of penalties and interest. Said election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; *provided*, that no informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. At such an election the ballot shall contain the words "....." (Question) "Yes," or "....." (Question) "No," or words equivalent thereto. If two-thirds of the votes cast are "Yes," the board of directors shall be authorized to incur the

act. Said board is hereby authorized and empowered to hold, use, acquire, manage, occupy, and possess said property and rights as herein provided; *provided, however*, that any property acquired by the district may be conveyed to the United States in so far as the same may be needed by the United States for the construction, operation and maintenance of works for the benefit of the district under any contract which may be entered into with the United States pursuant to this act. *As amended, Stats. 1917, 265.*

4740. Special election for special assessment, when.

SEC. 18. The board of directors may, at any time when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district, the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this act. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof be determined and declared, in all respects in conformity with the provisions of sections 5 and 6. The notice must specify the amount of money proposed to be raised, and the purpose for which it is intended to be used. At such elections the ballots shall contain the words "Assessment—Yes," or "Assessment—No." If two-thirds or more of the votes cast are "Assessment—Yes," the board shall immediately levy an assessment sufficient to raise the amount voted. The assessment so levied shall be computed and entered on the assessment roll by the secretary of the board and collected in the same manner as other assessments provided for herein; and when collected shall be paid into the district treasury for the purpose specified in a notice of such special election. *As amended, Stats. 1917, 265.*

4741. Power to incur debts limited—Proviso—Power to levy and collect tax.

SEC. 19. The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void; *provided*, that for the purpose of organization, or for any of the purposes of this act, the board of directors may, before the collection of the first assessment, incur an indebtedness not exceeding in the aggregate the sum of three thousand dollars, and may cause warrants of the district to issue therefor, bearing interest at six per cent per annum; *provided*, that the directors have the right and power to levy a tax of not to exceed five (5) cents the acre on all land and lands in said district for the payment of all expenses of organization and matters relating thereto; *and provided further*, that thereafter the directors have the right and power to levy a tax annually of not to exceed three (3) cents the acre on all land and lands in said district for the payment of the ordinary and current expenses of the district, including the salary of officers and other incidental expenses. After such levy is made, the secretary of the board of directors shall transmit the same to the county auditor of the county within which said district is located; the county auditor shall enter the same in the tax rolls of the county; and it shall be the duty of the county treasurer to collect such taxes at the time and in the same manner that other taxes are collected. *As amended, Stats. 1915, 439.*

4744. County commissioners to examine books.

SEC. 22. Any board of directors of any such irrigation district, or the secretary thereof, shall at any time allow any member of the board of county commissioners, when acting under the order of such board, to have

access to all books, records, and vouchers of the district which are in possession or control of said board of directors or said secretary of said board, and in case any district is appointed fiscal agent of the United States, or by the United States is authorized to make collections for or on behalf of the United States in connection with any federal irrigation project, such board of directors, or the secretary thereof, shall at any time allow any officer or employee of the United States, when acting under the order of the secretary of the interior, to have access to all books, records, and vouchers of the district which are in possession or control of the secretary or of said board. *As amended, Stats. 1915, 440.*

4745. General plan of operation — Special election, when — Procedure— Assessments based on benefits.

SEC. 23. As soon as practicable after the organization of any such district, the board of directors shall, by a resolution entered on its records, formulate a general plan of its proposed operation, in which it shall state what constructive works or other property it proposes to purchase and the cost of purchasing the same; and further what construction work it proposes to do and how it proposes to raise funds for carrying out said plan. For the purpose of ascertaining the cost of any such construction work said board shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plan, and furnish the proper basis for an estimate of the cost of carrying out the same. All such surveys, examinations, maps, plans, and estimates shall be made under the directions of a competent irrigation engineer and certified by him. No such surveys, examinations, or plans need be made if it is proposed to enter into contract with the United States under the federal laws. Upon receiving said report, said board of directors shall proceed to determine the amount of money necessary to be raised, and shall immediately thereafter call a special election, at which shall be submitted to the electors of said district possessing the qualifications prescribed by this act, the question whether or not the expense shall be authorized, and whether by bond issue or otherwise. Notice of such election must be given by posting notices in three public places in each election precinct in said district at least four weeks before the date of said election, and the publication thereof for the same length of time in some newspaper published in the district, and in case no paper is published in the district then in a paper published in each county in which the district, or any part thereof, is located. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued, and, in case such maps and estimates have been made, it shall further state that copies thereof are on file and open for public inspection by the people of the district, at the office of said board. But if contract is proposed to be made with the United States and bonds are not to be deposited with the United States in connection therewith, the question to be submitted at such special election is whether contracts shall be entered into with the United States. The notice of election in such case shall state the maximum amount of money proposed to be payable to the United States for construction purposes exclusive of penalties and interest. Said election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; *provided*, that no informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. At such an election the ballot shall contain the words "....." (Question) "Yes," or "....." (Question) "No," or words equivalent thereto. If two-thirds of the votes cast are "Yes," the board of directors shall be authorized to incur the

expense, and if a bond issue be authorized, shall cause bonds in said amounts to be issued, and if a contract with the United States be authorized, the board shall negotiate and execute a contract calling for payment not exceeding the amount voted upon; if more than one-third of the votes cast at any bond election are "No," the result of such election shall be so declared and entered of record. And whenever thereafter said board, in its judgment, deems it for the best interest of the district that the question of the issuance of bonds in said amounts, or any other amounts, shall be submitted to the electors it shall so declare of record in its minutes, and may thereupon submit such questions to said electors in the same manner and with like effect as at such previous elections, but no question shall be resubmitted to the electors within one year after the same has been voted upon and rejected; *provided further*, that said elections may authorize the assessment of all lands in the district based upon benefits by the irrigation plan or scheme as herein provided, and provide for the payment of such assessments by annual payments or at such times as may seem fit, each tract of land assessed being liable for its proportion on the benefit basis and for no further amount. *As amended, Stats. 1915, 441; 1917, 266.*

4746. Issue of bonds, regulations concerning.

SEC. 24. The bonds authorized by any vote shall be designated as a series, and the series shall be numbered consecutively as authorized. The portion of the bonds of the series sold at any time shall be designated as an issue, and each issue shall be numbered in its order. The bonds of such issue shall be numbered consecutively commencing with those earliest falling due, and they shall be designated as eleven-year bonds, twelve-year bonds, etc. They shall be negotiable in form, and payable in money of the United States as follows, to wit: At the expiration of eleven years from each issue, five per cent of the whole number of bonds of such issue; at the expiration of twelve years, six per cent; at the expiration of thirteen years, seven per cent; at the expiration of fourteen years, eight per cent; at the expiration of fifteen years, nine per cent; at the expiration of sixteen years, ten per cent; at the expiration of seventeen years, eleven per cent; at the expiration of eighteen years, thirteen per cent; at the expiration of nineteen years, fifteen per cent; at the expiration of twenty years, sixteen per cent; *provided*, that such percentages may be changed sufficiently so that every bond shall be in an amount of one hundred dollars, or a multiple thereof, and the above provisions shall not be construed to require any single bond to fall due in partial payments. Interest coupons shall be attached thereto, and all bonds and coupons shall be dated on January 1, or July 1, next following the date of their authorization, and they shall bear interest at the rate of not to exceed six per cent per annum, payable semiannually on the first day of January and July of each year. The principal and interest shall be payable at the place designated therein. Said bonds shall be each of a denomination of not less than one hundred dollars, nor more than one thousand dollars, and shall be signed by the president and secretary, and the seal of the board of directors shall be affixed thereto. Coupons attached to each bond shall be signed by the secretary. Said bonds shall express on their face that they were issued by the authority of this act, naming it, and shall also state the number of the issue of which said bonds are a part. The secretary and the treasurer shall each keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser. In case the money raised by the sale of all the bonds be insufficient for the completion of the plans and works adopted, and additional bonds be not voted, it shall be the duty of the board of directors to provide for the completion of said

plan by levy of assessment therefor, in the manner hereinafter provided; *provided further*, that when the money provided by any previous issue of bonds has become exhausted by expenditures herein authorized therefor, and it becomes necessary to raise additional money for such purpose, additional bonds may be issued, submitting the question at a general election to the qualified voters of said district, otherwise complying with the provisions of this section in respect to an original issue of said bonds; *provided, also*, the lien for taxes for the payment of interest and principal or of any bond issue, or for the payment of moneys to the United States under contract by the district, shall be a prior lien to that of any subsequent bond issue, or to that under any subsequent contract with the United States; *provided further*, that the time for the issuance and maturity of the bonds and the manner of their payment may be otherwise determined and directed, if submitted to a vote by the electors of said district at the election authorizing the said bonds; *provided further*, that the contract with the United States, if any, may provide for such installments and for repayment of the principal at such times as may be required by the federal laws and may be agreed upon between the board and the secretary of the interior and the bonds securing the payment of the same, if any be issued and deposited, may be in like terms and of such denominations as may be agreed upon. *As amended, Stats. 1915, 441; 1917, 267.*

4747. Apportionment of benefits—Maps—Assessments to be proportional.

SEC. 25. That prior to any election to authorize an issue of bonds, or a contract with the United States, as hereinbefore provided, the board of directors shall examine each tract or legal subdivision of land in the said district, and shall determine the benefits which will accrue to each of such tracts or subdivisions from the construction or purchase of such irrigation works; and the cost of such work shall be apportioned or distributed over such tracts or subdivisions of land in proportion to such benefits, and the amounts so apportioned or distributed to each of said tracts or subdivisions shall be and remain the basis for fixing the annual assessments levied against such tracts or subdivisions in carrying out the purposes of this act; *provided*, that if contract be made with the United States to provide for release of liens to the United States, the benefits apportioned to each tract of land shall be in proportion to the amount of the obligation to the United States released, as provided in section 13 hereof. And if any lands within such district shall not be released from any lien, then the benefits shall be apportioned and distributed in proportion to benefits accruing thereto in accordance with the federal acts of Congress, public notices and regulations and the contracts between the districts and the United States. And prior to such election such board of directors shall make, or cause to be made, a list of such apportionment or distribution, which list shall contain a complete description of each subdivision or tract of land of such district and the amount and rate per acre of such apportionment or distribution of cost, and the name of the owner thereof; or they may prepare a map on a convenient scale showing each of said subdivisions or tracts with the rate per acre of such apportionment entered thereon; *provided*, that where all lands on any map or section of a map are assessed at the same rate a general statement to that effect shall be sufficient. Said list or map shall be made in duplicate, and one copy of each shall be filed in the office of the state engineer, and one copy shall remain in the office of said board of directors for public inspection, and at least thirty days prior to any such election the secretary of the district shall publish a notice in a newspaper published in the county where the office of the district is located, or if there be no such newspaper then in some newspaper in general circulation

in such county, stating that the list or map showing such apportionment of benefits has been duly filed in the office of the district for public inspection, and shall file a copy of such list or map at each election precinct for the use of the election officers. Whenever thereafter an assessment is made, either in lieu of bonds, or an annual assessment for raising the interest on bonds, or any portion of the principals, or the expenses of maintaining the property of the district, or any special assessment voted by the electors, it shall be spread upon the lands, in the same proportion as the assessment of benefits, and the whole amount of the assessment of benefits shall equal the amount of bonds or other obligations authorized at the election last above mentioned. *As amended, Stats. 1917, 269.*

4749. Confirmation of proceedings—Proviso.

SEC. 27. The board of directors of the irrigation district shall file with the clerk of the district court in and for the county in which his office is situated a petition, praying in effect that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petition shall state generally that the irrigation district was duly organized and the first board of directors elected, that due and lawful proceedings were taken to issue bonds in an amount to be stated, or that lawful proceedings were taken for the execution of a contract with the United States, as the case may be, and that said assessment, list and apportionment were duly made and a copy of said assessment, list and apportionment shall be attached to said petition, but the petition need not state other facts showing such proceedings; *provided*, that after the organization of the district is complete, a petition may be filed for the confirmation of the proceedings so far, or after the authorization of any issue of bonds, or after the execution of contract with the United States, such petition may be so filed, and where the procedure is by separate petitions for the confirmation of different portions of said proceedings, subsequent proceedings may be in the name of reopening of the same case, but shall not be considered as authorizing any rehearing of the matter theretofore heard and decided. *As amended, Stats. 1917, 270.*

4751. Hearing and confirmation.

SEC. 29. Upon the hearing of such special proceedings, the court shall examine all the proceedings set up in the petition, may ratify, approve, and confirm the same, or any part thereof, and in case of a petition to confirm said assessment, list, apportionment, and distribution, the courts shall hear all objections either filed in said proceedings or brought up in the hearing before the board of directors as aforesaid, and for that purpose any person desiring to be heard upon objections overruled by the board of directors, shall state substance of such objections and the rulings of the board in his answer, and if the proceedings relate to the authorization of contract with the United States the court may examine the proceedings for the authorization thereof and the validity of such contract and may approve and confirm the same. The court shall disregard every error, irregularity, or omission which does not affect the substantial right of the party, and if the court shall find that said assessments, list, and apportionment are in any substantial matter erroneous or unjust, the same shall not be returned to said board, but the court proceed to correct the same so as to conform to this act, and the rights of all parties in the premises, and the final order or decree of the court may approve and confirm such proceedings in part; and in case the proceedings for organization of the district and the issue of bonds are approved, the court shall correct all the errors in the assessment, apportionment, and distribution of costs as above

provided, and render the final decree approving and confirming all of the said proceedings. In case of the approval of the organization of the district and the disapproval of the proceedings for issuing bonds, the district shall have the right to institute further proceedings for the issuance of bonds de novo. The cost of the special proceedings may be allowed and apportioned among the parties thereto in the discretion of the court. *As amended, Stats. 1917, 270.*

4753. Payment of bonds and interest.

SEC. 31. Said bonds and the interest thereon and all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as herein provided, shall be paid by revenue derived from the annual assessment upon the land and the district; and all the land in the district shall be and remain liable to be assessed for such payment. *As amended, Stats. 1915, 442.*

4758. Levy of assessments.

SEC. 36. Annually, before October first, the board of directors shall levy an assessment upon the lands in said district upon the basis, and in the proportion, of the list and apportionment of benefits approved by the court as hereinbefore provided, which assessment shall be sufficient to raise the annual interest on the outstanding bonds, and all payments due or to become due the ensuing year to the United States or any person or persons under any contract between the district and the United States, or said person or persons accompanying which bonds of the district have not been deposited with the United States or any person or persons, as herein provided. At the expiration of ten years after the issue of said bonds of any issue, the board must increase said assessment, as may be necessary from year to year, to raise a sum sufficient to pay the principal of the outstanding bonds as they mature. The secretary of the board must compute and enter in a separate column of the assessment book the respective sums, in dollars and cents, to be paid as an assessment on the property therein enumerated. When collected, the assessment shall be paid into the county treasury, and shall constitute a special fund, to be called "Bond Fund of.....Irrigation District." In case any assessment should be made for the purpose contemplated by a bond authorization, it shall be entered in a separate column of the assessment book in the same manner as the bond fund; and when collected shall constitute the "Construction Fund of.....Irrigation District," or in case such assessments include amounts due or to become due under any contract between the district and the United States as aforesaid, "Bond and United States Contract Fund of.....Irrigation District." *As amended, Stats. 1915, 442.*

4760. Payment of assessments.

SEC. 38. After such assessment is made up, the secretary of the board of directors shall forthwith certify the same to the county auditor of the county in which the district is located, and the county auditor shall enter the same in the tax rolls of the county; and it shall be the duty of the county treasurer to collect such taxes at the time and in the same manner and subject to the same penalties that other taxes are collected. Said taxes shall become due and delinquent at the same time and shall be collected by the same officers and in the same manner as state and county taxes. *As amended, Stats. 1915, 443.*

4761. Delinquent list.

SEC. 39. The county auditor, when making up the assessment roll, shall

been effected, and dividing said consolidated district into three divisions, and shall appoint some person qualified under this act to act as director of each of said divisions of said district until the next general election for the election of officers, when a board of directors shall be elected as provided in section 5; *provided, however*, that the organization of such district shall not take effect until the first Tuesday of the January following said order of its establishment. If the date provided by law for the election of directors shall come between the date of said order of the board of county commissioners and said first Tuesday of January, then in making such order said board shall designate the board of directors of one of the consolidated districts as a board to take charge of said election, and a director shall in that case be elected for each division of said consolidated district, and in that case no appointment of directors shall be made by said board of county commissioners. If, however, upon such a canvass by said board of county commissioners it appears that a majority of votes cast in any district thus proposed to be consolidated is "Consolidation—No," then a record of that fact shall be entered in the same minutes of the said board of county commissioners, and all the proceedings had under this section shall be void; *provided also*, that in case contract has been made between either district and the United States, as in section 13 provided, no consolidation shall be made and no order of consolidation entered until the secretary of the interior shall assent thereto in writing, and such assent shall be filed with the board of county commissioners. *As amended, Stats. 1915, 445.*

District dissolved—Method of procedure.

SEC. 69½. Upon the filing of the petition in the district court setting forth that said irrigation district should be forthwith dissolved, such petition to be signed by at least a majority of the land owners and who own at least two-thirds of the land in said district, the said court shall make its order setting said petition for hearing, giving at least ten and not more than twenty days notice thereof, by publication in a newspaper, if one is published in the county; *provided further*, that before the order can be entered dissolving the district, the directors must show that the district, as such, does not owe any money nor that there are any outstanding bonds of said district or other evidence of indebtedness. Upon a proper showing being made the said district court shall enter its order dissolving absolutely such irrigation district; *provided further*, the said district may be divided or land excluded therefrom on a similar showing and petition signed by a majority of the electors owning at least two-thirds of all the land in the said district; *provided further*, that in case contract has been made between the district and the United States no division of said district or change in the boundaries of the district thereof, and no order dividing or changing the boundaries of the district or excluding land therefrom shall be made until the secretary of the interior shall assent thereto in writing, and such assent be filed with the said court having jurisdiction thereof. *Added, Stats. 1915, 446.*

4791. Duty of treasurer.

SEC. 70. It shall be the duty of the treasurer, or secretary-treasurer of the said district, to attend all sales of property for delinquent taxes where assessments or taxes have been levied by the district, and in case there are no bidders for any parcel or parcels of property offered for sale and which parcel or parcels are affected by a tax or assessment of said district, to pay such tax and costs thereon, then such treasurers may bid for and bid in such parcel or parcels of property as others will not buy as aforesaid, in the name of and for said district; and such treasurer shall take the certificate of sale, or deeds for such property, as other private buyers and subject to the same redemption, fees, and other provisions of law relating

of the district, and thereupon the district shall be and remain an irrigation district as fully and to every intent and purpose as if the lands which are included in the district by the change of the boundaries as aforesaid had been included therein at the original organization of the district; *provided*, that in case contract has been made between the district and the United States, as in section 13 provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing, and such assent be filed with the board of directors. *As amended, Stats. 1915, 444.*

4783. Excluded lands to be surveyed.

SEC. 61. The board of directors to whom such petition is presented must cause the land described in such petition to be surveyed by a competent irrigation engineer, and if found to be too high to receive any benefit from irrigation works of said district, said board must make an order changing the boundaries of said district so as to exclude the land described in said petition; *provided*, that in case contract has been made between the district and the United States, as in section 13 provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent be filed with the board of directors. *As amended, Stats. 1915, 445.*

4786. Districts may be consolidated—Election to decide, when—Ballots—Directors of consolidated district—Provisos.

SEC. 64. Whenever the board of directors of any two or more irrigation districts which are contiguous deem for the best interests of their respective districts that the same be consolidated into a single district, such board of directors may petition the board of county commissioners for an order for an election, to vote upon the question of such consolidation, which petition shall state in detail the terms upon which said consolidation is proposed to be made. Upon receiving such petitions, the said board of county commissioners shall request the state engineer to investigate the conditions of such districts, and all questions affecting such proposed consolidation, and he shall make a report of the result of such investigation to the board of county commissioners not more than ninety days after such request is received. At the time said report upon the matter is made, said board of county commissioners, if deemed advisable, shall make an order fixing the time for an election in the said district to vote upon the question of such proposed consolidation, which time shall not be less than thirty, nor more than sixty days after the date of said report. Notice of said election shall be published as required for notice of the election in section 4 of this act; and the said board of directors shall make all necessary arrangements for such election in their respective districts as provided in this act for other elections. The ballots should be substantially as follows: "Consolidation—Yes," "Consolidation—No." The said board of directors shall canvass the returns of such election as provided in case of usual district elections, and shall immediately thereafter transmit, by messenger or by registered mail, certified abstracts of the result of said election in their respective districts to the clerk of the board of county commissioners. Within ten days after such returns are received by the clerk the said board of county commissioners shall meet and canvass the same. If it appears that a majority of all the votes cast in each of said districts is "Consolidation—Yes," said board shall make an order and enter the same of record in its minutes establishing said consolidated district, giving its boundaries and designation, and in detail the terms under which the consolidation has

been effected, and dividing said consolidated district into three divisions, and shall appoint some person qualified under this act to act as director of each of said divisions of said district until the next general election for the election of officers, when a board of directors shall be elected as provided in section 5; *provided, however*, that the organization of such district shall not take effect until the first Tuesday of the January following said order of its establishment. If the date provided by law for the election of directors shall come between the date of said order of the board of county commissioners and said first Tuesday of January, then in making such order said board shall designate the board of directors of one of the consolidated districts as a board to take charge of said election, and a director shall in that case be elected for each division of said consolidated district, and in that case no appointment of directors shall be made by said board of county commissioners. If, however, upon such a canvass by said board of county commissioners it appears that a majority of votes cast in any district thus proposed to be consolidated is "Consolidation—No," then a record of that fact shall be entered in the same minutes of the said board of county commissioners, and all the proceedings had under this section shall be void; *provided also*, that in case contract has been made between either district and the United States, as in section 13 provided, no consolidation shall be made and no order of consolidation entered until the secretary of the interior shall assent thereto in writing, and such assent shall be filed with the board of county commissioners. *As amended, Stats. 1915, 445.*

District dissolved—Method of procedure.

SEC. 69½. Upon the filing of the petition in the district court setting forth that said irrigation district should be forthwith dissolved, such petition to be signed by at least a majority of the land owners and who own at least two-thirds of the land in said district, the said court shall make its order setting said petition for hearing, giving at least ten and not more than twenty days notice thereof, by publication in a newspaper, if one is published in the county; *provided further*, that before the order can be entered dissolving the district, the directors must show that the district, as such, does not owe any money nor that there are any outstanding bonds of said district or other evidence of indebtedness. Upon a proper showing being made the said district court shall enter its order dissolving absolutely such irrigation district; *provided further*, the said district may be divided or land excluded therefrom on a similar showing and petition signed by a majority of the electors owning at least two-thirds of all the land in the said district; *provided further*, that in case contract has been made between the district and the United States no division of said district or change in the boundaries of the district thereof, and no order dividing or changing the boundaries of the district or excluding land therefrom shall be made until the secretary of the interior shall assent thereto in writing, and such assent be filed with the said court having jurisdiction thereof. *Added, Stats. 1915, 446.*

4791. Duty of treasurer.

SEC. 70. It shall be the duty of the treasurer, or secretary-treasurer of the said district, to attend all sales of property for delinquent taxes where assessments or taxes have been levied by the district, and in case there are no bidders for any parcel or parcels of property offered for sale and which parcel or parcels are affected by a tax or assessment of said district, to pay such tax and costs thereon, then such treasurers may bid for and bid in such parcel or parcels of property as others will not buy as aforesaid, in the name of and for said district; and such treasurer shall take the certificate of sale, or deeds for such property, as other private buyers and subject to the same redemption, fees, and other provisions of law relating

thereto. Said property shall be held, treated, and disposed of in accordance with the laws relating to similar cases in which counties purchase property. *Added, Stats. 1915, 447.*

Guardian or executor considered owner, when—Corporations and copartnerships considered natural persons.

SEC. 71. A guardian, executor or administrator shall be considered as the owner of the land held by him as such guardian, executor or administrator, and shall have the right to sign petitions, vote and do all other things that any person may or can do under this act. Corporations and copartnerships holding land in the district shall be considered as persons entitled to exercise all the right of natural persons, and the president of the corporation or other person duly authorized by the president or vice-president may sign any petition authorized by this act or cast the vote of the corporation at any district election. *Added, Stats. 1917, 271.*

An Act to provide for the organization and government of irrigation districts, for the irrigation and drainage of lands and other related undertakings thereby, and for the acquisition and distribution of water and other property, construction, operation and maintenance of works, diversion, storage, distribution, collection and carriage of water; cooperation with the United States; and matters properly connected therewith.

Approved March 19, 1919, 84

Districts, how organized.

SECTION 1. A majority in number of the holders of title, or evidence of title, to lands susceptible of one mode of irrigation from a common source or combined sources, and by the same system or combined systems of works, may propose the organization of an irrigation district under this act; *provided*, said holders of title or evidence of title shall hold such title or evidence of title to at least one-half part of the total area of the land in the proposed district; *provided further*, that every signer of a petition for the organization of an irrigation district shall be the holder of title or evidence of title to at least five acres of land within the proposed district. The equalized county assessment roll next preceding the presentation of a petition for the organization of an irrigation district shall be sufficient evidence of title for the purpose of this act, but other evidence may be received, including receipts or other evidence of rights of entrymen on land under any law of the United States, and such entrymen shall be competent signers of such petition, and the land on which they have made entries shall, for the purpose of said petition, be considered as owned by them. Such entrymen shall share all the privileges and obligations of freeholders and owners of private land within the district, under the several provisions of this act, including the right to vote and hold office, subject to the terms of the act of Congress entitled "An act to promote reclamation of arid lands," approved August 11, 1916. The petitioners may determine in said petition whether the proposed district shall be divided into three, five, or seven divisions, and whether it shall have three, five, or seven directors, but if no number is named in the petition the board of county commissioners may determine whether the number shall be three, five, or seven.

Petition presented to county commissioners—Bond—Notice.

SEC. 2. Whenever it is proposed to organize an irrigation district a petition shall first be presented to the board of county commissioners of the county in which the lands or the greater portion thereof are situated, signed by the required number, possessing the qualifications provided for

election held under this act subsequent to the organization of the district the secretary shall cause notice specifying the polling places and time of holding the election to be posted in three public places in each election precinct and in the office of the board of directors. Prior to the time for posting the notice the board of directors shall appoint three qualified electors to act as inspectors of election in each election precinct and shall also appoint two clerks of election for each precinct. If the board of directors fail to appoint a board of election or the members appointed do not attend the opening of the polls on the morning of election the electors of the precinct present at that hour may appoint the board or supply the place of absent members thereof. The board of directors shall, in its order appointing the board of election, designate the hour and the place in each precinct where the election shall be held. At least four weeks before any such election said board of directors shall appoint a registrar for each precinct of the district. Such registrars shall be governed in the performance of their duties by the general election laws of the state as far as they are applicable and shall be at their places of registration to receive applications for registrations from nine o'clock a. m. to nine o'clock p. m. on each of the three Saturdays next preceding the date of election. The registrars shall require registrants to take the following oath, in substance: "I am, or have declared my intention to become, a citizen of the United States, am over the age of twenty-one years, and am, or properly represent, under the law in pursuance of which this election is to be held, the holder of title or evidence of title, as defined in said law, to land within the boundaries of the.....irrigation district." No election for any purpose except for organization shall be held in any irrigation district without such registration, and only electors duly registered shall be entitled to vote thereat.

Same—Director's bond.

SEC. 7. Before opening the polls each inspector and each clerk must take and subscribe to an oath to faithfully perform the duties imposed upon him by law. Any elector of the precinct may administer and certify such oath. Vacancies occurring during the progress of the election may be filled by the remaining inspector or inspectors, and any inspector of election may administer and certify oaths. The time of opening and closing the polls, the manner of conducting the election, canvassing and announcing the result, the keeping of the tally-list, and the making and certifying of such result and the disposition of the ballots after election shall be the same, as near as may be, as provided for elections under the general election law of this state, but no registrar or election officer shall receive any pay for services at any district election. The returns shall be delivered to the secretary of the district and no list, tally-paper or returns from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors shall meet at its usual place of meeting on the second Monday after an election to canvass the returns and it shall proceed in the same manner and with like effect, as near as may be, as the board of county commissioners in canvassing the returns of general elections, and when it shall have declared the result the secretary shall make full entries in his record in like manner as is required of the county clerk in general elections. The board of directors must declare elected the person or persons having the highest number of votes given for each office. The secretary shall immediately make out and deliver to such person or persons a certificate of election signed by him and authenticated with the seal of the board. Within ten days after receiving the certificate of his election, each director shall take and subscribe to an official oath and file the same with the secretary of the board of directors. Each member of

within the division from which he is elected. Each division shall constitute an election precinct for the purposes of this act. The board of county commissioners shall give notice of such election, which shall be published for two weeks prior to such election in a newspaper within the county where the petition is filed. Such notice shall require the electors to cast ballots, which shall contain the words "Irrigation District—Yes," or "Irrigation District—No," or words equivalent thereto, and the names of persons to be voted for as directors. For the purpose of this election the board shall establish a polling place in each election precinct aforesaid, and shall also appoint three qualified electors to act as inspectors of election in each election precinct, and also appoint for each precinct two clerks of election. The number of directors and the number and boundaries of divisions of any district organized under the laws of this state shall not be altered or changed except by a petition of a majority of the qualified electors of the district and a majority of the directors.

Election—General laws to govern.

SEC. 4. Except as in this act otherwise provided, all such elections shall be conducted as near as may be practicable in accordance with the general election laws of this state. The board of county commissioners shall meet on the second Monday succeeding such election and proceed to canvass the votes cast thereat, and if upon such canvass it appear that a majority of the electors voted "Irrigation District—Yes" the board, by an order entered upon its minutes, shall declare such territory duly organized as an irrigation district under the name and style theretofore designated, and shall declare the persons receiving respectively the highest number of votes for directors to be duly elected, and shall cause a copy of such order and a plat of said district, each duly certified by the clerk of the board of county commissioners, to be immediately filed for record in the office of the county recorder of each county in which any portion of such lands are situated, and certified copies thereof shall also be filed with the county clerk of such counties, and thereafter the organization of the district shall be complete. No lands while they remain within a district shall be included in any other district.

Time of irrigation district elections—Terms—Nominations—Fee.

SEC. 5. The regular elections of irrigation districts shall be held on the first Tuesday after the first Monday in April of the second calendar year after the completion of the organization thereof, and on the same day biennially thereafter, or as to districts heretofore organized, biennially after the first regular election therein. The directors elected at the organization election shall be selected by lot so that one, two or three directors, according to whether there are in all three, five, or seven on the board, shall hold office until their successors are elected at the next regular election and qualify, and two, three, or four directors, as the case may be, shall hold office until their successors are elected at the second regular election after organization and qualify, and at the regular election biennially thereafter directors shall be elected, to replace the directors whose terms expire, for terms of four years, or until their successors are elected and qualify. Directors so elected shall have the qualifications prescribed in this act for directors elected at the time of organization. Nominations for the office of directors shall be made by filing a declaration with the secretary within fifty days before the date of election and not later than ten days before such election. Candidates shall pay twenty-five (\$25) dollars filing fee with such declaration.

General rules concerning election.

SEC. 6. Not less than fifteen nor more than twenty days before any

election held under this act subsequent to the organization of the district the secretary shall cause notice specifying the polling places and time of holding the election to be posted in three public places in each election precinct and in the office of the board of directors. Prior to the time for posting the notice the board of directors shall appoint three qualified electors to act as inspectors of election in each election precinct and shall also appoint two clerks of election for each precinct. If the board of directors fail to appoint a board of election or the members appointed do not attend the opening of the polls on the morning of election the electors of the precinct present at that hour may appoint the board or supply the place of absent members thereof. The board of directors shall, in its order appointing the board of election, designate the hour and the place in each precinct where the election shall be held. At least four weeks before any such election said board of directors shall appoint a registrar for each precinct of the district. Such registrars shall be governed in the performance of their duties by the general election laws of the state as far as they are applicable and shall be at their places of registration to receive applications for registrations from nine o'clock a. m. to nine o'clock p. m. on each of the three Saturdays next preceding the date of election. The registrars shall require registrants to take the following oath, in substance: "I am, or have declared my intention to become, a citizen of the United States, am over the age of twenty-one years, and am, or properly represent, under the law in pursuance of which this election is to be held, the holder of title or evidence of title, as defined in said law, to land within the boundaries of the.....irrigation district." No election for any purpose except for organization shall be held in any irrigation district without such registration, and only electors duly registered shall be entitled to vote thereat.

Same—Director's bond.

SEC. 7. Before opening the polls each inspector and each clerk must take and subscribe to an oath to faithfully perform the duties imposed upon him by law. Any elector of the precinct may administer and certify such oath. Vacancies occurring during the progress of the election may be filled by the remaining inspector or inspectors, and any inspector of election may administer and certify oaths. The time of opening and closing the polls, the manner of conducting the election, canvassing and announcing the result, the keeping of the tally-list, and the making and certifying of such result and the disposition of the ballots after election shall be the same, as near as may be, as provided for elections under the general election law of this state, but no registrar or election officer shall receive any pay for services at any district election. The returns shall be delivered to the secretary of the district and no list, tally-paper or returns from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors shall meet at its usual place of meeting on the second Monday after an election to canvass the returns and it shall proceed in the same manner and with like effect, as near as may be, as the board of county commissioners in canvassing the returns of general elections, and when it shall have declared the result the secretary shall make full entries in his record in like manner as is required of the county clerk in general elections. The board of directors must declare elected the person or persons having the highest number of votes given for each office. The secretary shall immediately make out and deliver to such person or persons a certificate of election signed by him and authenticated with the seal of the board. Within ten days after receiving the certificate of his election, each director shall take and subscribe to an official oath and file the same with the secretary of the board of directors. Each member of

said board of directors shall execute an official bond in the sum of fifteen thousand dollars (\$15,000), which shall be approved by the judge of the district court in and for the county where such organization is effected. Such bonds shall be recovered in the office of the county recorder and filed with the secretary of the board.

Who entitled to vote.

SEC. 8. Any person, male or female, of the age of 21 years or over, whether a resident of the district or not, who is or has declared his intention to become a citizen of the United States and who is a bona-fide holder of title, or evidence of title, as defined in section 1 hereof, to land situated in the district, shall be entitled to one vote at any election held under the provisions of this act, and shall be held to be referred to whenever the words elector or electors are used herein. Any elector residing outside of the district owning land in the district and qualified to vote at district elections shall be considered as a resident of that division and precinct of the district in which the major portion of his lands are located for the purpose of determining his place of voting and qualifications for holding office. A guardian, executor or administrator shall be considered as the holder of title or evidence of title as prescribed in section 1 hereof to the land in the estate for which he is such guardian, executor, or administrator, and shall have the right to sign petitions, vote and do all things that any elector may or can do under this act. Corporations holding land in the district shall be considered as persons entitled to exercise all the rights of natural persons and the president of the corporation, or other person duly authorized by the president or vice-president in writing, may sign any petition authorized by this act or cast the vote of the corporation at any election.

Officers—Regular meetings—Special meetings.

SEC. 9. The officers of such district shall consist of three, five, or seven directors, as aforesaid, a president and vice-president elected from their number, a secretary and a treasurer. The secretary and treasurer shall be appointed by the board of directors and may or may not be members of said board. Such officers shall serve at the will of the board. One person may be appointed to serve as secretary and treasurer. The board of directors shall designate some place within the county where the organization of the district was effected as the office of the board and the board shall hold a regular monthly meeting in its office on the first Monday in every month and such special meetings as may be required for the proper transaction of business; *provided*, that all special meetings must be called by the president or a majority of the board. The order calling such special meeting shall be entered of record, and the secretary shall give each member not joining in the order five days' notice of such special meeting. The order must specify the business to be transacted at such special meeting, and none other than that specified shall be transacted. Whenever all members of the board are present at a meeting the same shall be deemed a legal meeting and any lawful business may be transacted. All meetings of the board shall be public and a majority of the members shall constitute a quorum for the transaction of business, but on all questions requiring a vote there shall be a concurrence of at least a majority of the members of the board. All records of the board shall be open to the inspection of any elector during business hours. On the first Monday in May next following their election, the board of directors shall meet and organize, elect a president and vice-president and appoint a secretary and treasurer. The appointees aforesaid shall file bonds which shall be approved by the board, for the faithful performance of their duties. Any vacancies in the office

and no informalities in conducting such an election shall invalidate the same if it shall have been otherwise fairly conducted. At such an election the ballot shall contain the words ".....(Question) Yes," or ".....(Question) No," or words equivalent thereto. If two-thirds or more of the votes cast are "Yes," the board of directors shall be authorized to incur the expense, and if a bond issue be authorized shall cause bonds in the amount authorized to be issued. If more than one-third of the votes cast at any bond election are "No," the result of such election shall be so declared and entered of record. Thereafter, whenever said board in its judgment deems it for the best interest of the district that the question of the issuance of bonds in such amount, or in any other amount, shall be submitted to the electors it shall so declare of record in its minutes, and may thereupon submit such question to said electors in the same manner and with like effect as at such previous election, but no question shall be resubmitted to the electors within one year after the same has been voted upon and rejected.

Bonds in series—Description.

SEC. 16. The bonds authorized by vote shall be designated as a series, and the series shall be numbered consecutively as authorized. The portion of the bonds of the series sold at any time shall be designated as an issue and each issue shall be numbered in its order. The bonds of such issue shall be numbered consecutively, commencing with those earliest falling due, and they shall be designated as eleven-year bonds, twelve-year bonds, etc. They shall be negotiable in form, and payable in money of the United States as follows, to wit: At the expiration of eleven years from each issue, five per cent of the whole number of bonds of such issue; at the expiration of twelve years, six per cent; at the expiration of thirteen years, seven per cent; at the expiration of fourteen years, eight per cent; at the expiration of fifteen years, nine per cent; at the expiration of sixteen years, ten per cent; at the expiration of seventeen years, eleven per cent; at the expiration of eighteen years, thirteen per cent; at the expiration of nineteen years, fifteen per cent; at the expiration of twenty years, sixteen per cent; *provided*, that such percentage may be changed sufficiently so that every bond shall be in the amount of one hundred dollars, or a multiple thereof, and the above provisions shall not be construed to require any single bond to fall due in partial payments. Interest coupons shall be attached thereto, and all bonds and coupons shall be dated on January 1, or July 1, next following the date of their authorization, and they shall bear interest at the rate of not to exceed six per cent per annum, payable semiannually on the first day of January and July of each year. The principal and interest shall be payable at the place designated therein. Said bonds shall be each of a denomination of not less than one hundred dollars, nor more than one thousand dollars, and shall be signed by the president and secretary, and the seal of the district shall be affixed thereto. Coupons attached to each bond shall be signed by the secretary. Said bonds shall express on their face that they were issued by the authority of this act, naming it, and shall also state the number of the issue of which said bonds are a part. The secretary and the treasurer shall each keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser. In case the money raised by the sale of all the bonds be insufficient for the completion of the plans and works adopted, and additional bonds be not voted, it shall be the duty of the board of directors to provide for the completion of said plan by levy or assessment therefor; *provided, further*, that when the money obtained by any previous issue of bonds has become exhausted by expenditures herein authorized, and it becomes necessary to raise additional moneys to carry out the

adopted plan, additional bonds may be issued if authorized at an election for that purpose, which election shall be called and otherwise conducted in accordance with the provisions of this act in respect to an original issue of bonds. The lien for taxes for the payment of interest and principal of any bond issue shall be a prior lien to that of any subsequent bond issue. The time for the issuance and maturity of the bonds and the manner of their payment may be otherwise determined and directed, if submitted to a vote, by the electors of said district at the election authorizing the said bonds.

How cost apportioned.

SEC. 17. Whenever the electors shall have authorized an issue of bonds, as hereinbefore provided, the board of directors shall examine each tract or legal subdivision of land in the district, and shall determine the benefits which will accrue to each of such tracts or subdivisions from the construction or purchase of the works proposed for the district; and the costs of such works shall be apportioned or distributed over such tracts or subdivisions of land in proportion to such benefits. The board shall make, or cause to be made, a list of such apportionment or distribution, which list shall contain a complete description of each subdivision or tract of land of such district with the amount and rate per acre of such apportionment or distribution, and the name of the owner thereof, or it may prepare a map on a convenient scale showing each of said subdivisions or tracts with the rate per acre of such apportionment entered thereon; *provided*, that where all or any portion of the lands are assessed by said board at the same rate a general statement to that effect shall be sufficient. Said list or map shall be made in duplicate, and one copy of each shall be filed in the office of the state engineer, and the original shall remain in the office of the board of directors. Whenever thereafter an assessment is made, either in lieu of bonds, or an annual assessment for raising the interest on bonds, or any portion of the principal, or the expenses of maintaining the property of the district, or any special assessment voted by the electors, it shall be spread upon the lands in the same proportion as the assessments of benefits, and the whole amount of the assessments of benefits shall equal the amount of bonds or other obligations authorized at the election last above mentioned; *provided always*, that the benefits arising from the undertakings for which special assessments are made may be distributed equally over the lands, or especially apportioned, when such course is authorized in the election therefor, and that assessments or tolls and charges may be made or imposed as hereinafter provided, when coming within the designation of operation and maintenance charges, by way of a minimum stated charge per acre whether water is used or not, and a charge for water used in excess of the amount delivered for the minimum charge, or such other reasonable method of fixing or collecting the operation and maintenance charge as the board of directors may adopt. Where drainage works are to be constructed, benefits may be apportioned to higher lands not then actually requiring drainage by reason of the fact that their irrigation contributes water which must be carried off or away from the lower lands.

Apportionment of benefits to be published—Notice of meeting.

SEC. 18. Before final action upon the apportionment of benefits provided for in the last preceding section, the board shall publish notice for two weeks in a newspaper published in the county in which the organization was effected that it will meet at its office on the day stated in said notice for the purpose of reviewing such apportionment of benefits. At such meeting the board shall proceed to hear all parties interested who may appear, and it shall continue in session from day to day until the apportionment is completed. It shall hear and receive all evidence offered,

including any maps or surveys which any owners of lands may produce, and may classify the lands in such a way that the assessment when completed shall be just and equitable. Any person interested who shall fail to appear before the board shall not be permitted thereafter to contest said apportionment, or any assessment thereunder, except upon a special application to the court in the proceeding for confirmation of said apportionment, showing reasonable excuse for failing to appear before the board. In case any elector makes objection to said apportionment before said board, and said objection is overruled and such elector does not consent to the apportionment as finally determined, such objection shall, without further proceedings, be heard at the confirmation proceedings herein provided for.

Confirmation proceedings—Notice to be published.

SEC. 19. The board of directors of the district shall file with the clerk of the district court in and for the county in which its office is situated, a petition praying in effect that the proceedings aforesaid be examined, approved and confirmed by the court. The petition shall state generally that the irrigation district was duly organized and the first board of directors elected, that due and legal proceedings were taken to issue bonds, stating the amount thereof, and that an apportionment of benefits was made by the board and a list thereof duly filed according to law. A list of the apportionment shall be attached to said petition, but the petition need not state other facts. Such petition for confirmation of the proceedings thus far had may be filed after the organization of the district is complete, or after the authorization of any issue of bonds, or after any other undertaking of the district. The court or judge shall fix the time and place for the hearing of any such petition, and the clerk shall publish a notice thereof for two consecutive weeks in a newspaper published in the county. Any person interested may on or before the day fixed for said hearing answer said petition. None of the pleadings need be sworn to, and every material statement of the petition not controverted by answer shall be taken as true. A failure to answer the petition shall be deemed to be an admission of the material allegations thereof. The rules of pleading and practice provided by the civil practice act of this state shall be followed so far as applicable. A motion for a new trial, and all proceedings in the nature of appeals or rehearings, may be had as in any ordinary civil action.

Proceedings in district court—Costs.

SEC. 20. Upon the hearing of such petition, the court shall examine all the proceedings sought to be confirmed and may ratify, approve and confirm the same or any part thereof; and when an apportionment of benefits is examined all objections thereto, including those made at the hearing before the board, shall be set up in the answer and heard by the court. The court shall disregard every error, irregularity or omission which does not affect the substantial rights of any party, and if the court shall find that the apportionment is as to any substantial matter erroneous or unjust, the same shall not be returned to the board, but the court shall proceed to correct the same so as to conform to this act and the rights of all parties in the premises, and the final judgment may approve and confirm such proceedings in whole or in part. In case of the approval of the organization of the district and the disapproval of the proceedings for issuing bonds the district may again undertake proceedings for the issuance of bonds and have the same confirmed as herein provided. The cost of the proceedings in court may be allowed and apportioned among the parties thereto in the discretion of the court.

Sale of bonds.

SEC. 21. The board may sell bonds from time to time in such quantities as may be necessary and most advantageous to raise money for the construction of works and the acquisition of property and rights and to otherwise carry out the objects and purposes of this act. Before making any sale the board shall by resolution declare its intention to sell a specific number and amount of bonds, and if said bonds can be sold at par with accrued interest they may be disposed of without advertising; otherwise notice shall be published for three weeks in a newspaper in the county in which the office of the district is situated, and in such other newspaper in or outside of the state as the board may deem expedient, that sealed proposals will be received at its office on or before a day and hour set in said notice for the purchase of said bonds. At the time appointed the board shall publicly open the proposals, and sell the bonds to the highest responsible bidder, or it may reject all bids; but in case no bids are received, or all bids are rejected, it shall not again be necessary to advertise the sale thereof, but they may be sold at any time until canceled; *provided*, that the said board shall in no event sell any of the bonds for less than ninety (90) per cent of the par value thereof and accrued interest. If for any reason the bonds of a district cannot be sold, or if at any time it shall be deemed for the best interests of the district to withdraw from sale all or any portion of an authorized bond issue, the board of directors may, in its discretion, cancel the same and levy assessments in the amount of the bonds canceled; *provided*, that the revenue derived from said assessments must be employed for the same purpose as was contemplated by the bond authorization, but no levy shall be made to pay for work or material, payment for which was contemplated by bonds which have been authorized, until bonds to the amount of said assessments have been canceled. Assessments made in lieu of bonds canceled shall be collected in the same manner and shall have the same force and effect as other assessments levied under the provisions of this act; *provided*, that such assessments shall not during any one year exceed ten per cent of the total bond issue authorized by such district, unless a greater assessment shall be authorized by a majority vote of the qualified electors of the district voting at a general election or a special election called for that purpose.

Bonds and interest, how paid.

SEC. 22. Said bonds and the interest thereon shall be paid by revenue derived from the annual assessment upon the lands in the district; and all the land in the district shall be and remain liable to be assessed for such payment in accord with the apportionment of benefits as in this act provided.

Funds created and named.

SEC. 23. The following funds are hereby created and established, to which the moneys properly belonging shall be apportioned, to wit: Construction fund, bond fund, and general fund. Moneys accruing from the sale of bonds, and from any assessments levied for the direct payment of cost of construction, purchase of property, or other undertakings for which bonds may be issued, shall be deposited and kept in the construction fund. Moneys accruing from assessments levied for the payment of interest and principal on bonds shall be deposited and kept in the bond fund. All other moneys, including those realized from assessments, or, as the case may be, from tolls and charges levied or imposed for defraying the organization and current expense of the district, and expenses and cost of the care, operation, maintenance, management, repair, and necessary current

improvement or replacement of existing works and property, including salaries and wages of officers and employees and other proper incidental expenditures, shall be deposited and kept in the general fund. The treasurer of the district is hereby authorized and required to receive and receipt for and to collect the moneys accruing to the several funds above named, and to place the same to the credit of the district in the appropriate fund. Said treasurer shall be responsible upon his official bond for the safe-keeping and disbursement of the moneys in such funds. Interest coupons shall be paid by him as in this act provided. The board may establish rules and regulations and prescribe the conditions under which the treasurer may make disbursements from the general fund, but no other payments from any of the funds above named shall be made by the treasurer except upon vouchers signed by the president and secretary authorized by order of the board. The county treasurer or treasurers who are required by this act to collect assessments levied by the district are hereby authorized to turn over to the treasurer of the district all moneys so collected and to take his receipt therefor. Such district treasurer shall report to the board in writing on the first Monday in each month the amount of money in the several funds aforesaid and the amounts received and paid out in the preceding month, and the treasurer shall make such other report and accounting as the board may require. Such reports shall be verified and filed with the secretary of the board.

Payment of interest—Redemption of bonds.

SEC. 24. The treasurer, upon the presentation of interest coupons when due, shall pay the same from the bond fund. Whenever after ten years from the issuance of bonds said fund shall amount to the sum of ten thousand dollars, the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem at the lowest value at which they may be offered for liquidation, after advertising for at least three weeks in some newspaper published in the county in which the office of the district is located, and in such other newspapers as the board may deem advisable, for sealed proposals for the redemption of such bonds. Such proposals shall be opened by the board in open meeting at a time to be named in the notice, and the lowest bid or bids shall be accepted; *provided*, that no bonds shall be redeemed at a rate above par. In case two or more bids are equal the lowest-numbered bond shall have the preference, and if any of said bonds are not so redeemed, that amount of the redemption money shall be invested by the treasurer under the direction of the board in United States bonds or the bonds or warrants of the state or municipal or school bonds, and such bonds and the proceeds therefrom shall belong to the bond fund.

Secretary to be assessor—Duties as assessor.

SEC. 25. The secretary of the board of directors shall be the assessor of the district and on or before August fifteenth of each year shall prepare an assessment book containing a full and accurate list and description of all the land of the district, and a list of the persons who own, claim or have possession or control thereof during said year, giving the number of acres listed to each person. If the name of the person owning, claiming, possessing, or controlling any tract of said land is not known, it shall be listed to "unknown owner."

Board to correct assessments, when—Notice published.

SEC. 26. The board shall meet on the first Monday in September of each year to correct assessments and the secretary shall publish notice of such meeting for two weeks in a newspaper published in the county in which the district was organized. In the meantime the assessment book or books

shall remain in the office of the secretary for the inspection of all parties interested. The board of directors, which is hereby constituted a board of correction for the purpose, shall meet and continue from day to day as long as may be necessary, not to exceed five days, exclusive of holidays, and may make such changes in said assessment book or books as may be necessary to have it conform to the facts. Within ten days after the close of said session the secretary of the board shall have the corrected assessment book or books completed.

Assessment for interest increased, when.

SEC. 27. At its regular meeting in October the board of directors shall levy an assessment upon the lands in said district in accordance with the provisions of this act, which assessment shall be sufficient to raise the annual interest on the outstanding bonds. At the expiration of ten years after a bond issue or such other period as may be authorized, the board must increase said assessment as may be necessary from year to year to raise a sum sufficient to pay the principal of the outstanding bonds of that issue as they mature. The secretary of the board shall compute and enter in a separate column of the assessment book or books the respective sums to be paid as an assessment on the property therein enumerated. Except as otherwise provided herein assessments made for any of the other purposes of this act shall be made and levied as above provided and entered in appropriate columns of the assessment book or books.

Assessment lien against property, when.

SEC. 28. An assessment is a lien against the property assessed from and after the first Monday in March of the succeeding year. The lien of the bonds of any issue shall be a preferred lien to that of any subsequent issue, and such lien is not removed until the assessments are paid or the property sold for the payment thereof.

Assessment book for county auditors—Duties of county officers.

SEC. 29. An assessment book shall be made up for the lands in each county in which the district is situated and the secretary of the board of directors shall forthwith certify the same to the county auditor or county auditors, as the case may be, who shall enter such assessments in the tax rolls of such county or counties. The assessments when levied and enrolled shall become due and delinquent at the same time and be subject to the same penalties and shall be collected by the same officers and in the same manner as state and county taxes. The county auditor, district attorney, clerk and treasurer shall do and perform all acts necessary to accomplish the collection of the same with penalties and the sale for delinquency and redemption of the lands involved.

Bids for construction.

SEC. 30. After adopting a plan for such works as are proposed, and when there is sufficient money in the construction fund as aforesaid, the board of directors shall cause notice to be given by the secretary by publication thereof for not less than two weeks in a newspaper published in the county in which the district was organized, and in such other publications or newspapers as it may deem advisable, calling for bids for the construction of such works, or any portion thereof. If less than the whole work is advertised then the portions so advertised must be particularly described in such notice. The notice shall set forth that the plans and specifications can be seen at the office of the board, that the board will receive sealed proposals for the construction of the proposed works and that a contract therefor will be let to the lowest responsible bidder, subject to the right of the board to reject any and all bids, stating the time and

place for opening the bids. At the time and place appointed the bids shall be opened in public and as soon as convenient thereafter the board shall accept a bid or bids and contract for the construction of the works, either in portions or as a whole, or it may reject any and all bids and readvertise for proposals. Contracts for the purchase of material shall be entered into in the same manner, but if no reasonable bid is received the material may be purchased without advertisement. Any person or persons to whom a contract may be awarded shall enter into a bond in favor of the district with good and sufficient sureties, to be approved by the board for not less than 20 per cent of the amount of the contract price, conditioned upon the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer employed by the district and approved by the board; *provided*, that no contract of any kind shall be let by said board of directors unless there is sufficient money in the district treasury at the time such contract is let to fully pay for the work or material so contracted for.

No bids, when.

SEC. 31. On the petition of a majority of the electors of the district, the board of directors may do any work mentioned in the preceding section on behalf of the district without calling for bids, and it may use the construction fund therefor.

Construction fund, how used and reimbursed—Service refused, when.

SEC. 32. The cost and expense of purchasing and acquiring property, and of constructing works to carry out the formulated plan or plans, whether for irrigation or drainage or both, or for the improvement or supplementing of existing works, except as otherwise provided herein, shall be paid out of the construction fund. For the purpose of defraying the organization and current expense of the district, and of the care, operation, maintenance, management, repair, and necessary current improvement or replacement of existing works and property, including salaries and wages of officers and employees and other proper incidental expenditures, the board may fix rates of tolls or charges, and provide for the collection thereof by the district treasurer as operation and maintenance, or some like designation, or may levy assessments therefor, or for a portion thereof, collecting the balance as tolls or charges as aforesaid. In this relation provision may be made by the board for the fixing, levying, and collection of a minimum, flat, or stated operation and maintenance assessment, toll, or charge per acre, whether water is used or not, and a further operation and maintenance toll or charge for water used in excess of the amount delivered for the minimum charge; or the board may adopt other reasonable methods of fixing and collecting the operation and maintenance charges. Assessments, tolls, and charges may be collected in advance, and the assessment aforesaid, and such tolls and charges, may be based upon an estimate of the operation and maintenance revenue required for the current or ensuing year; to be adjusted as near as may be from year to year. Water service may be refused and water delivery may be shut off whenever there is a default in the payment of operation and maintenance, but all other legal remedies shall also be available for the enforcement of the debt. The tolls and charges shall be collected by the treasurer and deposited in the general fund, and he shall account therefor and disburse the same as in this act provided.

Rights of board in constructing works.

SEC. 33. The board of directors shall have the power to construct the

works of the district across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume, in such manner as to afford security for life and property; but said board shall restore the same when so crossed or intersected to their former state as near as may be or in a manner not unnecessarily impairing its usefulness; and if a railroad company or those in control of the property, thing or franchise to be crossed cannot agree with the board upon the amount to be paid, or upon the point or points or the manner of crossing or intersecting, the same shall be ascertained and determined as herein provided in respect to the taking of land.

Rights of way over state land granted.

SEC. 34. The right of way is hereby given, dedicated and set apart, to locate, construct, operate and maintain the works of the district over and through any of the lands which are now or may be the property of the state.

Districts to have the right of eminent domain.

SEC. 35. All irrigation districts organized under the laws of the State of Nevada shall have the right of eminent domain with the power by and through their board of directors to cause to be condemned and appropriated in the name of and for the use of said districts all reservoirs, canals, and works, with their appurtenances, constructed for the irrigation or drainage of any lands within the district or for uses incidental thereto, and all lands required therefor, and all lands and rights of way required for the works constructed, or to be constructed, or which may be acquired by the district, and all necessary appurtenances and other property and rights necessary for the construction, operation, maintenance, repair, and improvement of said works. Such districts shall have the right by and through their boards of directors to acquire by purchase or other legal means any or all of the property mentioned and referred to in this section. In any action or proceedings for the condemnation of any such property wherein an irrigation district is plaintiff such district, within six months after final judgment, shall pay the amount awarded in the judgment, or said judgment will be annulled. Except as otherwise provided in this act the provisions of the laws of Nevada relative to the right of eminent domain, civil actions, new trials and appeals, shall be applicable to and constitute the rules of practise in condemnation proceedings by irrigation districts.

How certain lands may be annexed.

SEC. 36. The holder or holders of any title or evidence of title, as defined in section 1 hereof, representing one-half or more of any body of lands adjacent to or in the vicinity of an irrigation district, which are susceptible of irrigation or drainage, as the case may be, or both, by the district system, or combined systems of works, may file with the board of directors of the district a petition, in writing, praying that said land may be annexed. The petition shall describe the land and also describe the several parcels owned by petitioners.

Notice of petition advertised—Cost of proceedings.

SEC. 37. The secretary shall cause a notice of the filing of such petition to be published two weeks in a newspaper published in the county where the district was organized. The notice shall state the filing of such petition, the names of the petitioners, and contain a description of the lands mentioned in the petition, sufficient to identify the same, and it shall notify all persons interested in or that may be affected by such change of boundaries of the district to appear at the office of the board at a time named in

said notice and show cause, in writing, if any they have, why the lands mentioned should not be annexed to said district. The petitioner or petitioners shall advance to the district treasurer sufficient money to pay the estimated cost of these proceedings.

Directors to hear petition.

SEC. 38. The board of directors, at the time mentioned in said notice, or at such other time to which the hearing may be adjourned, shall hear the petition and all the objections thereto. The failure of any person to show cause as aforesaid shall be taken as an assent on his part to a change of the boundaries of the district so as to include the whole or part of the land mentioned in the petition.

New lands to share previous expense.

SEC. 39. The board of directors may require as a condition to the granting of said petition that the petitioners shall pay to the district such sums as nearly as the same can be estimated as said petitioners or their grantors would theretofore have been required to pay had such lands been included in such district at the time the same was originally organized.

Petition rejected, when—Accepted, when.

SEC. 40. The board of directors, if they deem it not for the best interests of the district to include therein the lands mentioned in the petition, shall reject the same. But if the board deem it for the best interests of the district, and if no person interested shall show cause why the proposed change be not made, or if having shown cause withdraws the same, the board may order, without any election, that the lands mentioned in said petition or any part thereof be annexed to the district. The order shall describe the lands so annexed, and the board shall cause a survey thereof to be made if deemed necessary.

Objection, how treated.

SEC. 41. If any person interested shall object as aforesaid and shall not withdraw the same, and if the board deem it for the best interests of the district to include the lands mentioned in said objection, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the lands proposed to be included in the district.

Election held—Same as bond election.

SEC. 42. Upon the adoption of the resolution mentioned in the last preceding section the board shall order that an election be held within said district to determine whether the lands described in said resolution shall be annexed to the district, and shall fix the time at which such election shall be held. Notice thereof shall be published, and such election shall be held, and all things pertaining thereto conducted in the manner prescribed by this act in case of an election to determine whether bonds of the district shall be issued. The ballots cast at such election shall contain the words "for annexation," or "against annexation," or expressions equivalent thereto. The notice of election shall describe the lands proposed to be annexed to the district.

Effect of majority vote.

SEC. 43. If at such election a majority of all the votes cast shall be against annexation the board shall proceed no further in the matter; but if a majority of such votes be in favor of annexation the board shall thereupon order that the boundaries of the district be changed to include the lands to be so annexed and cause a copy of such order, together with a plat of said lands, each certified to by the secretary of the board, to be filed for

record in the office of the county recorder of the county or counties in which such lands are situated. The order shall describe the land so annexed and thereafter such lands shall be subject to all the provisions of this act. Immediately after the filing for record of the order annexing said lands the directors shall state on their minutes to which division or divisions in said district the lands shall be attached, or may redivide the district to accommodate said lands.

Certain lands thrown out of district—Procedure.

SEC. 44. The holder or holders of title, or evidence of title, as described in section 1 hereof, may file with the board of directors a petition, in writing, praying that the boundaries of said district be so changed as to exclude the lands described therein. The petition shall describe the boundaries of the several parcels owned by the petitioners and shall state the reasons for the exclusion prayed for. The board of directors shall cause the land described in such petition to be surveyed and reported upon by a competent irrigation engineer, and if the board shall then find said lands to be of such character as to prevent their receiving benefits from the existing or proposed works, the board shall make an order changing the boundaries of said district so as to exclude the land described in said petition. If lands are excluded as in this section provided a copy of the order excluding same, with a plat of land excluded, each certified by the secretary of the board, shall be filed for record in the office of the county recorder of the county or counties in which such lands are situated. If said petition be denied the signers thereof shall be liable to the district for the full amount of cost of the proceedings and survey of said lands.

State lands to become part of irrigation district, when.

SEC. 45. No state lands shall become a part of an irrigation district except by the consent of the state land register, who is hereby authorized to consent thereto on behalf of the state in writing when in his judgment, with the advice of the state engineer, such lands will be benefited by inclusion in the district. Such consent may be indicated by signing a petition for organization or annexation as in this act provided. District assessments, charges, and tolls against said lands shall not be assessed as taxes, but shall be billed to the state land register, who shall voucher the same to the appropriate officer or officers for payment, and such officer or officers are hereby authorized to pay the same out of any state funds not otherwise appropriated. Contracts for the sale of such lands shall be conditioned upon the payment by the purchaser of such assessments, charges and tolls, and upon cancelation of such contracts payments due the district shall be made by the state as above provided.

Vested rights not affected.

SEC. 46. Vested interests in or to structures, works and property or water rights owned or used in connection with mining or power development shall never be affected by or taken under the provisions of this act, saving and excepting that rights of way may be acquired by the district over or across such works and property.

Irrigation district, how dissolved.

SEC. 47. Upon the filing of a petition in the district court setting forth that an irrigation district should be forthwith dissolved, such petition to be signed by at least a majority of the electors owning at least two-thirds of the land in said district, the court shall make its order setting said petition for hearing, giving at least three weeks notice by publication in a newspaper published in the county in which the district was organized;

provided, that before the order can be entered dissolving the district the directors must show that the district does not owe any money nor that there are any outstanding bonds of the district or other evidence of indebtedness. Upon a proper showing being made, the court shall enter its order dissolving such irrigation district.

Special elections for raising money—Procedure.

SEC. 48. The board of directors of a district may at any time when deemed advisable call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this act. Such election shall be called and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of this act in respect to bond elections. The notice shall specify the amount of money proposed to be raised and the purpose for which it is intended to be used, and whether an equal rate of assessment or a special apportionment of benefits is to be made in that relation if either is proposed. At such election the ballots shall contain the words "Assessment—Yes," or "Assessment—No." If two-thirds or more of the votes cast are "Assessment—Yes," the board shall immediately proceed to apportion the benefits, if such apportionment is to be made, and to levy an assessment sufficient to raise the amount voted. The assessment so levied shall be entered in the assessment book or books by the secretary of the board and collected in the same manner as other assessments provided for herein and when received by the treasurer of the district shall be deposited and kept in the construction fund. At such an election there may be submitted the proposition of authorizing the board of directors to levy each year for a stated number of years assessments not exceeding a stated amount per acre for the purpose of providing a fund from which repairs may be made and replacement and extensions of existing works may be constructed and paid for as the necessity for same arises. In such case plans and specifications need not be made in advance—a general description of the contemplated undertaking shall be sufficient. If said proposition be carried by two-thirds of the electors the board shall be authorized to levy such assessment and same shall be collected as are other assessments under this act. Moneys realized from such assessments shall be deposited and kept in the general fund and disbursed by the treasurer in accord with the direction of the board or rules and regulations established by it.

Division may provide for local works.

SEC. 49. Any one of the several divisions of a district may provide for the construction of local drains, laterals or other improvements, or the replacement or extension of existing works or structures, the benefits of which are limited to such division, in the following manner: Upon presentation to the board of directors of the district of a petition, signed by a majority of the electors of such division representing at least one-half of the total acreage thereof, describing in a general way the local matters proposed to be undertaken and naming two electors of such division for local directors thereof, the board of directors of the district shall consider such petition at a regular meeting and if it finds that the law has been complied with shall approve the same and appoint the electors named in the petition as members of the local board. One shall hold office until his successor is elected at the next biennial district election and qualifies, and the other until his successor is elected at the second biennial district election after his appointment and qualifies. The terms of such local directors shall be determined by lot and their successors shall be elected for four-

year terms at the biennial elections. The said two local directors, with the director of the district from that division, shall constitute the local board of such division, and such board may provide for the local undertakings above named; being hereby authorized for that purpose in so far as applicable to exercise the powers and perform the duties granted to or imposed upon the board of directors of the district in connection with its affairs. Such local board shall thereupon prepare plans and estimates of the local undertakings proposed to be accomplished by such division, stating therein whether the funds therefor are to be raised by a single special assessment or the said board is to be authorized to secure the necessary amounts by way of annual assessments extending over a stated number of years, and not in excess of a stated amount per acre; and if the latter method is to be used a general statement of the purposes for which the money is to be raised may be substituted for more explicit plans and estimates. Such plans and estimates or statement shall be filed with the secretary of the district, accompanied by a request of the local board that an election be called in the division to authorize the proposed special assessment or assessments and the construction of the proposed works; thereupon the secretary of the board shall give notice of the purpose, time and place of such election, naming the polling place, and inspectors and clerks of election suggested by the local board; such notice to be published and election to be held, as near as may be, as provided in this act for an election for special assessments in the district. If such election fail of the required two-thirds vote of the electors of the division, the terms of office of the local directors shall thereupon terminate and the said local board shall be dissolved. If the special assessment or assessments and construction of the proposed works be authorized at such election, the local board shall levy such assessments, or, as the case may be, shall proceed to the levying of annual assessments, and a list of such assessments or the first annual assessment, if to be made that year, shall be delivered to the treasurer of the district and by him entered in the assessment book or books thereof, and such assessment or assessments and the collection thereof shall thereafter take the course of assessments of the district as in this act provided. All the above-described proceedings relating to the local undertakings of a division, including apportionment of benefits for undertakings authorized by special election, may be confirmed in court as a part of the confirmation proceedings, or upon petition of the board of directors of the division. Each member of the local board of a division shall receive three dollars per day for each day in attending meetings of the board, or while engaged in official business under the order of the board. When the local undertakings above provided for are accomplished and paid for, a showing to that effect shall be made to the board of directors of the district, and upon the approval thereof by such board the terms of office of the local directors shall terminate, and any moneys of such division in the district treasury shall be appropriately credited to the lands of the division in connection with future assessments against such lands.

Annual report to state engineer.

SEC. 50. At least as often as once a year after the approval of said plans the board of directors shall make a report to the state engineer of the progress of the work of the district and whether or not the plan formulated under the provisions of this act is being successfully carried out, and whether or not in the opinion of the board the funds available will complete the proposed works. Upon receipt of such report by the state engineer, he shall make such suggestions and recommendations to such board of directors as may be necessary to conserve the best interests of the district.

Financial condition published annually.

SEC. 51. On or before the first Tuesday of February of each year the board of directors of each irrigation district shall publish in at least one issue of some newspaper published in the county where the office of the district is located a full, true, and correct statement of the financial condition of said district on the first day of that year, giving a statement of all liabilities and assets of the district.

County commissioners to have free access to records.

SEC. 52. The board of directors of each irrigation district, or the secretary thereof, shall at any time allow any member of the board of county commissioners, when acting under the order of such board, to have access to all books, records, and vouchers of the district which are in the possession or control of said board of directors or said secretary.

Towns may be supplied with water.

SEC. 53. Water may be supplied by the district, or by a division thereof when a local board of such division is created and authorized, to towns within or in the vicinity of the district, and an appropriate charge made therefor, when such supply can be developed as an incident of or in connection with the works of the district or the local undertakings of a division.

Additional powers.

SEC. 54. In addition to the powers with which irrigation districts are or may be vested under the laws of the state, irrigation districts shall have the following powers: To cooperate and contract with the United States under the federal reclamation act of June 17, 1902, and all acts amendatory thereof or supplementary thereto, or any other act of Congress heretofore or hereafter enacted authorizing or permitting such cooperation, and to cooperate and contract with the State of Nevada under any law heretofore or hereafter enacted authorizing or permitting such cooperation, for purposes of construction of works, whether for irrigation or drainage, or both, or for the acquisition, purchase, extension, operation, or maintenance of constructed works, or for a water supply, or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands or for the collection of moneys due the United States as fiscal agents or otherwise.

Directors to carry out enlarged powers.

SEC. 55. The board of directors shall generally perform all such acts as shall be necessary to carry out the enlarged powers in the foregoing section enumerated. Said board may enter into obligations or contracts with the United States for the aforesaid purposes, and may provide therein for the delivery and distribution of water to the lands of such district under the aforesaid acts of Congress and the rules and regulations established thereunder. The contract may provide for the conveyance to the United States as partial consideration for the privileges obtained by the district under said contract of water rights or other property of the district; and in case contract has been or may hereafter be made with the United States as herein provided bonds of the district may be transferred to or deposited with the United States, if so provided by said contract and authorized as hereinafter set forth, at not less than ninety-five per cent of their par value to the amount to be paid by the district to the United States or any part thereof; the interest, or principal, or both, of said bonds to be raised by assessment and levy as hereinafter prescribed and to be regularly paid to the United States and applied as provided in said contract. Bonds transferred to or deposited with the United States may call for the payment of such interest, not exceeding six per cent per annum, may be of

such denomination, and may call for the repayment of the principal at such times as may be agreed upon between the board and the secretary of the interior. The contract with the United States may likewise call for the payment of the amount or amounts to be paid by the district to the United States or any part thereof at such times and in such installments and with such interest charges not exceeding the aforesaid rate as may be agreed upon, and for assessment and levy therefor as hereinafter provided, and the obligations of such contracts shall be a prior lien to any subsequent bond issue. Moreover, the board may accept on behalf of the district appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collection of moneys for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized so to act and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto. Districts cooperating with the United States may rent or lease water to private lands, entrymen, or municipalities in the neighborhood of the district in pursuance of contract with the United States.

Election on proposal to enter into cooperative contract.

SEC. 56. Any proposal to enter into a contract with the United States for the repayment of construction moneys, the cost of a water supply, the operation and maintenance of existing works, or the acquisition of property, and to issue bonds if any be proposed, shall be voted upon at an election wherein proceedings shall be had in so far as applicable in the manner provided in the case of the ordinary issuance of district bonds. Notice of the election herein provided for shall contain, in addition to the information required in the case of ordinary bond election, a statement of the maximum amount of money to be payable to the United States for construction purposes, costs of water supply and acquisition of property, exclusive of penalties and interest, together with a general statement of the property, if any, to be conveyed by the district as hereinabove provided. The ballots at such election shall contain a brief statement of the general purpose of said contract and the amount of the obligation to be assumed, as aforesaid, with the words "Contract—Yes," and "Contract—No," or "Contract and bonds—Yes," and "Contract and bonds—No," as the case may be. The board of directors may submit any such contract or proposed contract and bond issue, if any, to the district court of the county wherein is located the office of said board to determine the validity thereof and the authority of the board to enter into such contract, and the authority for and the validity of the issuance and deposit or transfer of said bonds; whereupon the same proceedings shall be had as in the ordinary case of the judicial determination of the validity of bonds and with like effect.

Act of Congress to govern distribution of water.

SEC. 57. All water delivered to the district or the right to the use of which is acquired by the district, under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress applicable thereto, the rules and regulations of the secretary of the interior thereunder, and the provisions of said contract, and provision may be made in the contract between the district and the United States for the refusal of water service to any or all lands which may become delinquent in the payment of any assessment, toll or charge levied or imposed for the purpose of carrying out any contract between the district and the United States. In case of contract with the United States

under which the district assumes the operation and maintenance of the existing works, assessments, tolls and charges may be levied or imposed by the board of directors, as provided in this act to raise the sums required annually therefor, including amounts due the United States under said contract.

Rights of way may be conveyed.

SEC. 58. Any rights of way or other property owned or acquired by the district may be conveyed by the board to the United States in so far as the same may be needed for the construction, operation and maintenance of works by the United States pursuant to this act.

Payment to United States, how provided for.

SEC. 59. All payments due or to become due to the United States under any contract between the district and the United States, including such payments of interest and principal on bonds as may be required in connection with a deposit or transfer thereof to the United States, shall be paid unless otherwise provided by contract, by revenue derived from annual assessments, apportioned as hereinafter prescribed, and levies thereof upon such real property within the district as may be accessible for district purposes under the laws of the state or by tolls and charges as the case may be, and such real property shall be and remain liable to be assessed and levied upon for such payments as herein provided. It shall be the duty of the board of directors annually to levy an assessment, or to impose and cause to be collected tolls or charges sufficient to raise the money necessary to meet all payments when due as provided in the contract. All money collected in pursuance of such contract by assessment and levies or otherwise, and to be paid to the United States, shall be paid into the district treasury and held in a fund to be known as the "United States Contract Fund," to be used for payments due to the United States under any such contract. Public lands of the United States within any district shall be subject to assessment for all purposes of this act to the extent provided for by the act of Congress approved August 11, 1916, entitled "An act to promote reclamation of arid lands," or any other law which may hereafter be enacted by Congress in the same relation, upon full compliance therewith by the district. Nothing in this act contained shall be construed to relieve the district from obligation to pay as a district in case of default of any land, unless so provided by the said contract between the district and the United States.

Board to provide release of mortgages and liens.

SEC. 60. The board may also provide by contract with the United States for the release of mortgages or liens given or reserved to the United States upon district lands, and may provide for the assumption by the district, either as principal or guarantor, of indebtedness to the United States on account of district lands, and apportion to each tract of land so released, benefits in the amount of the obligations to the United States so provided to be released; and the contract between the district and the United States may provide for the collection and payment of indebtedness so incurred or assumed by the district and the tax or assessment for the same at the same times and in the same amounts or installments provided in the federal reclamation laws, and if so provided in the contract, such taxes and assessments shall become delinquent at the same dates provided in the act of Congress of August 13, 1914 (38 Stats. 686), known as the reclamation extension act, and in that event, if it be provided in the contract that the United States waives any penalties for delinquency other or

greater than those named in the said act of Congress of August 13, 1914, then, instead of the penalties otherwise provided in state laws, the penalties for delinquency in the payment of that part of the tax representing the special assessment for payment of the obligations of the district to the United States shall be the penalties named in the said act of Congress of August 13, 1914, and the amount required to be paid in case of any redemption from any tax sale or tax judgment shall be determined by figuring the part thereof due to the United States upon the basis of the amount of such special assessment levied for the purpose of paying the United States plus the penalties named in said act of Congress of August 13, 1914. And the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto.

Payments due United States under contract, how apportioned.

SEC. 61. The assessment required in any year to meet the payment due to the United States under the contract as in this act provided may be in accord with an apportionment of benefits made in or in pursuance of such contract and in the ascertainment of such benefits there shall be taken into account the provisions of the contract between the United States and the district, the federal laws applicable thereto, and the notice and regulations issued in pursuance of said laws, and in case such contract is for the assumption by the district as principal or guarantor of indebtedness to the United States theretofore existing on account of district lands, there shall be further taken into account the provision of existing contracts carrying such indebtedness and the amounts of such liens as may be released in pursuance of the contract between the United States and the district.

Not dissolved nor bounds changed when under contract with United States.

SEC. 62. Where contract shall have been entered into and is in force and effect between the United States and any irrigation district, the district shall not be dissolved, nor shall the boundaries be changed, except upon written consent of the secretary of the interior, filed with the official records of the district. If such consent be given and lands be excluded, the areas excluded shall be free from all liens and charges for payments to become due to the United States. The board of directors of a district is hereby relieved from the duties imposed upon it in sections 15 and 30 of this act in so far as the same may not be required in case of contract between the district and the United States, and in that relation may take advantage of or adopt such surveys and plans as may have been or be made by the United States.

When district is served by United States works—Separate unit, when.

SEC. 63. When an irrigation district comprises lands which are served by works constructed by the United States and the portion of such works situated in a division of the district may be regarded as a separate unit of the larger system for operation and maintenance purposes, or when local drains, laterals, or other improvements may be provided as additions to such works and constitute benefits limited to such division, or when the replacement or extension of such works or some part thereof would constitute benefits limited to such division, a petition signed by the requisite number of electors of such division may be presented to the board of directors of the district and a local board of directors of such division created as provided in this act; whereupon such board of directors shall

have the power to contract with the United States for the operation of the existing system aforesaid, or for the construction either by such division or by the United States of local drains, laterals or other improvements and for the operation and maintenance thereof, or for the replacement or extension of existing works or structures and for the operation and maintenance thereof or any separate part of the same; *provided*, that such contract shall first be authorized by a special election held for the purpose in such division and for the purpose of authorizing the local board of directors to levy an assessment or assessments, as provided in this act, to secure the moneys required to carry out said contract, including the amounts that will be due the United States thereunder and that will be required for the construction of the proposed local drains, laterals, or other improvements, or for the replacement and extension of existing works or structures. Where it is proposed that a division shall assume only the operation and maintenance of existing works an election shall be held upon the contract in the same manner, but the local board of directors, after said contract is made in pursuance of the authority granted in such election, shall have the power to levy assessments or impose tolls and charges annually or otherwise to raise the amounts necessary to carry out said contract and to operate and maintain said works, including amounts to be paid to the United States under said contract, in the same manner and to the same effect as can be done by the board of directors of the district under the provisions of this act. Where local drains, laterals or improvements are to be constructed, or existing works or structures replaced or extended, and are thereafter to be operated and maintained by the division, the local board shall have similar power to levy assessments and to impose tolls or charges to raise the money required for such operation and maintenance, including amounts due the United States in that relation. The works described in the contract with the United States shall be constructed, replaced or extended by such local board of directors, and the money raised by such special assessment therefor or for the operation and maintenance thereof shall be collected, kept and disbursed, and the apportionment of benefits made, as in this act provided when a division of the district is authorized to provide for local undertakings, the benefits of which are limited to such division; *provided*, that the provisions of this act relating to cooperation between a district and the United States, including those relating to the distribution and apportionment of water and the apportionment of benefits, shall apply in case of contract between the United States and a division of a district in so far as applicable. The execution of such contract with the United States and all proceedings ancillary thereto may be confirmed in court as a part of the confirmation proceedings instituted by the district, or upon petition by the board of directors of the division.

When district comprises certain lands—Procedure.

SEC. 64. When an irrigation district comprises lands which are or may be served by works constructed by the United States, and a contract is proposed to be entered into with the United States for the operation and maintenance by the district of the existing works, or for the construction of a drainage system or other extension or improvement of such works, and the lands in a division of the district may be regarded as clearly outside the scope of such contract, the election thereon and for the authorization of the program or undertaking contemplated thereby may be confined to the remaining portion of the district exclusive of such division, and the apportionment of the benefits may be made accordingly; otherwise the proceedings in connection with such contract and the program or undertaking contemplated thereby shall be as heretofore provided in this act.

Additional bonds of officers, when.

SEC. 65. In any case where an irrigation district is appointed fiscal agent of the United States in connection with any federal reclamation project, or by the United States, or under contract therewith, is authorized or required to make collection of moneys on behalf of the United States, or for payments due the United States under any such contract, each director of the district, and the secretary and the treasurer thereof, shall execute a further and additional bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his office, or as fiscal or other agent of the United States, or both; and any such bonds may be sued upon by the United States or any person injured by the failure of such officer or officers of the district to fully, promptly or completely perform their respective duties. This requirement shall apply to the directors of a division, and in so far as applicable to the officers of a district acting in that relation, in case of contract between the United States and such division. In all cases of contracts with the United States as above described the board of directors of the district, or of a division thereof, and the secretary and treasurer of a district, shall at any time allow any officer or employee of the United States, when acting under the order of the secretary of the interior, to have access to all books, records and documents which are in the possession or control of such officers.

Newspaper publication defined.

SEC. 66. Whenever in this act any notice is required to be given by publication, such provision shall be satisfied by publishing the same in a weekly newspaper the same number of times consecutively as the number of weeks mentioned in the requirement.

Certain words defined and construed.

SEC. 67. Whenever the words "irrigation district" or "district" are used in this act, they shall be held to mean any irrigation district heretofore organized under the laws of the state as well as under this act, to the full extent required to accomplish the purposes of this act; and whenever the words "county treasurer" or "treasurer of the county" are used in this act, they shall as well be held to mean "ex officio tax receiver" or "tax receiver" of the county.

Certain districts not disturbed.

SEC. 68. Nothing in this act shall be so construed as to affect the validity of any district heretofore organized under the laws of this state, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; but said districts are hereby made subject to the provisions of this act as far as applicable; nor shall it affect, impair, or discharge any contract, obligation, lien or charge for, or upon which it was or might become liable or chargeable had not this act been passed; nor shall it affect the validity of any bonds which have been issued but not sold, nor shall it affect any action which now may be pending. In such districts as have been heretofore organized, and in which directors of the various divisions thereof have been elected by the votes of the electors of the district at large, such elections are hereby confirmed.

Not to repeal previous legislation, except certain act named.

SEC. 69. Nothing in this act shall be construed as repealing or in any wise modifying the provisions of any other act relating to the subject of irrigation or drainage except such as may be contained in the act entitled "An act to provide for the organization and government of drainage, irrigation and water storage districts, to provide for the acquisition of water

and other property, and for the distribution of the water thereby for irrigation purposes, and for other matters properly connected therewith," approved March 20, 1911, and subsequent acts supplementary thereto or amendatory thereof, all of which acts, so far as they may be inconsistent herewith, are hereby repealed.

Title of act.

SEC. 70. This act may be referred to in any action, proceeding, or legislative enactment as "The Nevada Irrigation District Act," and whenever the words "irrigation district" are or have been used in any action or proceeding or in any act or resolution of the legislature such words shall be construed to mean an irrigation district organized under the provisions of the act approved March 20, 1911, or acts supplementary thereto or amendatory thereof, referred to in the preceding section, or an irrigation district organized or existing under this act.

An Act to provide for the organization and government of drainage districts and to provide for the acquisition, repair and development of canals, drains, ditches, watercourses and other property, and for the distribution of water thereby for drainage purposes, and to provide for the levying of taxes and for the issuing and sale of bonds thereof.

Approved March 31, 1913, 461

Who may file petition.

SECTION 1. Whenever a majority of the owners of title or evidence of title of lands within a district proposed to be organized as a drainage district, who own or control not less than one-third in area of the land to be reclaimed or benefited, or whenever one-third of the owners of title of lands within a district proposed to be organized as a drainage district, and who own or control a major portion in area of the lands to be reclaimed or benefited, or lands which are susceptible of drainage desire to provide for the drainage of the same, they may propose the organization of a drainage district under the provisions of this act, and when so organized, such district shall have the powers conferred or that may hereafter be conferred by law upon such drainage districts. The equalized county assessment roll next preceding the presentation of a petition for the organization of a drainage district, under the provisions of this act, shall be sufficient evidence of title for the purpose of this act.

Petition, where presented.

SEC. 2. A petition shall first be presented to the board of county commissioners of the county in which the land is situated, and if the proposed district will contain land situate in more than one county, then in the county in which the greatest portion thereof is situated, signed by the required number of holders of title, or evidence of title, of such proposed district, evidenced as above provided, which petition shall set forth and particularly describe the proposed boundaries of such district, and shall pray that the same may be organized under the provisions of this act. Such petition shall be presented at a regular meeting of the said board of county commissioners, and due notice thereof shall be given as hereinafter provided. And the said petitioners shall file with the board of county commissioners a good and sufficient undertaking in the sum of two (2) per cent of the estimated cost of the proposed improvements in the said drainage district. The condition of such undertaking shall be to the effect that if the said board of county commissioners shall find no merit in the said petition and shall find that the cost of the proposed improvement or improvements shall be in excess of the benefit or benefits to be derived

therefrom, that the petitioners will pay all costs of preliminary surveys and the publication of notice and such other lawful expenses as may have been incurred by the said board of county commissioners in connection with such investigation. The petition shall also contain the name proposed to be given to the drainage district.

Notice of filing petition.

SEC. 3. Such petition for the creation of the proposed district being filed, the county clerk of said county shall cause three (3) weeks' notice of the presentation and filing of such petition to be given, addressed "to all persons interested," by posting notices thereof at the door of the courthouse of the county or counties in which the district is situated, and in at least three (3) of the most public places in such proposed district, and also by publishing a copy thereof at least once a week for three successive weeks in some newspaper or newspapers published in the county in which the district is proposed to be formed, and if any portion of said proposed district lie within another county or counties, then said petition and notice shall be posted as above provided or published in a newspaper published or having a general circulation in each of said counties. Such notice shall state when said petition was and is filed; the starting-points, route or routes, terminal or terminals, and general description of the proposed work; the boundaries and general description by legal subdivisions and name of the proposed drainage district, and at what meeting of said board of commissioners the petitioners will ask a hearing of said petition; *provided*, that it shall not invalidate said notice if no description of drains or ditches is given herein. If any of the land owners of said district are non-residents of the county or counties in which the proposed district will lie, the petition shall be accompanied by an affidavit, giving the names and places of residence of such nonresidents, if known, and if unknown, stating that upon diligent inquiry their places of residence cannot be ascertained; and the county clerk shall send a copy of the notice aforesaid to each of said nonresidents whose residence is known within three (3) days after the first publication of the same. The certificate of the county clerk, or the affidavit of any other credible person, affixed to a copy of said notice, shall be sufficient evidence of the posting, mailing and publication of said notices. *As amended, Stats. 1919, 444.*

Jurisdiction of county commissioners.

SEC. 4. The county commissioners of the county in which said petition shall be filed may hear the petition at any regular or special meeting, and may determine all matters, pertaining thereto, and all subsequent proceedings of the district when organized under this act, and may adjourn the hearing from time to time, or continue the case for want of sufficient notice or other good cause. The county commissioners, upon application of the petitioners, shall permit the petition, affidavit and orders to be amended, and no petitioner shall have the right to withdraw from said petition, except by the consent of the majority of the other petitioners thereon or where it shall be shown to the satisfaction of the county commissioners that the signature of the petitioner was obtained by fraud or misrepresentation.

Hearing on petition—Finding of county commissioners—Board of supervisors.

SEC. 5. When such petition is presented, the said board of county commissioners shall hear the petition, and may adjourn such hearing from time to time, not exceeding four weeks in all. On the hearing of any petition filed under the provisions of this chapter, all parties through or upon

whose land any of the proposed work may be constructed, or whose land may be damaged or benefited thereby, may appear and contest the necessity or utility of the proposed work, or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto. It shall be the duty of the county commissioners to hear and determine whether or not the said petition contains the signatures of a majority of the owners of title to the lands within said proposed district, and who represent one-third in area of the lands proposed to be affected by such work, or that the said petition is signed by one-third of the owners of lands in said proposed district who represent a major portion in area of the lands proposed to be reclaimed or benefited, and the affidavit of any three (3) or more of the signers of said petition that they have examined said petition and are acquainted with the locality of said district, and that the said petition is signed by a majority of such owners, who represent at least one-third in area of the lands proposed to be affected by such work, or that said petition is signed by one-third of the owners of lands in said proposed district who represent a major portion in area of the lands proposed to be reclaimed or benefited, may be taken by the county commissioners as prima facie evidence of the facts stated therein; or the oath or affirmation before said county commissioners, or the affidavit of any person, properly taken and certified by any person or court authorized to take acknowledgment of deeds to real estate in this state, giving the age of such party, and his or her ownership of lands to be named in such oath, affirmation or affidavit by proper description, shall be sufficient evidence to the county commissioners of such facts; *provided*, that all deeds made for the purpose of establishing or defeating the prayer of said petition not made in good faith and for a valuable consideration, shall be taken and held to be in fraud of the provisions of this act, and the holders thereof shall not be considered as owners thereof. If the county commissioners, after hearing any and all competent evidence that may be offered before it for and against the said petition shall find the same has not been signed as hereinbefore required, the said petition shall be dismissed at the cost of the petitioners; but if the county commissioners shall find that the petition has been signed as hereinbefore provided the county commissioners shall so find, and such finding shall be conclusive upon the land owners of such district that they have assented to and accept the provisions of this act; and the board of county commissioners may make such changes in the proposed boundaries as they may find to be proper, and shall establish and define such boundaries; *provided*, that said board shall not modify said boundaries so as to except from the operation of this act any territory within the boundaries of the district proposed by said petitioners which is susceptible of drainage by the system of works applicable to the other lands in such proposed district; nor shall any lands which will not, in the judgment of said board, be benefited by drainage by said system be included within such district; *provided*, that any person whose lands are susceptible of drainage from the same source may, in the discretion of the board of county commissioners, upon application of the owner to said board, have such lands included in said district. And if it shall further appear to the county commissioners that the proposed drain or drains, ditch or ditches, or other works, is or are necessary or will be useful for the drainage of the lands proposed to be drained thereby for the agricultural or sanitary purpose, or conducive to the public health or welfare, the county commissioners shall so find, and appoint three (3) competent persons, which shall be known as a board of supervisors, whose term of office shall be for three years, except, however, that the term of office of the first appointees shall be as follows: The term of office of one shall be for three

years, the term of office of one shall be for two years, and the term of office of one shall be for one year; and each of which appointees shall hold his office until his successor is appointed, as hereinafter provided, to lay out and construct such proposed work, and to levy a tax upon the lands in said drainage district, subject to the approval of the board of county commissioners, as hereinbefore provided. In case the lands to be drained shall be situated in different counties, not more than two (2) of the members of the board of supervisors shall be chosen from any one of such counties. And if the said board of county commissioners shall find that the establishment and creation of such drainage district will be a benefit as hereinbefore set forth, that the said board shall within ten (10) days proclaim such district or districts created, and that such proclamation shall be published for at least ten (10) days thereafter by posting in three (3) public places within said county, at least one of which places shall be within said drainage district, or by publishing the said proclamation in some paper printed in the English language, and having general circulation within the said county or counties, and the proclamation shall be substantially in the following form:

Office of the Board of County Commissioners, County
of....., State of Nevada, A. D. 19.....

In the matter of the petition of (here insert names of the petitioners)

The petition having been heard in the manner required by law, and the county commissioners having duly examined said petition, and having heard evidence concerning the same, and considering all objections to the same, it is ordered by the county commissioners that the petition be and the same is hereby granted; and the county commissioners further find that the work proposed in said petition to be done will be useful for agricultural or sanitary purposes to the owners of land within said proposed district; and the county commissioners also find that the persons who have signed said petition are of lawful age and are a majority of the adult land owners, representing one-third in area (or one-third of the adult land owners, owning a major portion, as the case may be) of the land to be affected by such proposed work. And the county commissioners further find that the said drainage district.....bounded as follows..... is duly established as provided by law.

And the following named are to be known as the board of supervisors for the terms set opposite their names:

.....of.....	for the term of.....
.....of.....	for the term of.....
.....of.....	for the term of.....

Attest:....., Clerk.
....., County Commissioners.

And upon entering such order of record said district is hereby declared by law to be organized as a drainage district by the name mentioned in the petition, and with the boundaries fixed by the order of said board of supervisors and said district is hereby declared to be a body corporate by the name mentioned in said order of county commissioners, with the right to sue and be sued, and to have perpetual succession, and may adopt and use a corporate seal; and the board of supervisors appointed as aforesaid and their successors in office shall from the entry of such order of confirmation constitute the corporate authorities of such drainage district, and shall exercise the functions conferred upon them by law. Said order shall be final. *As amended, Stats. 1919, 445.*

Time limit for contesting validity of organization.

SEC. 6. No action shall be commenced or maintained or defense made affecting the validity of the organization, unless the same shall have been commenced or made within sixty days after the making and entering of said order. Said board of county commissioners shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county recorder of each county in which any portion of such lands is situated and must also immediately forward a copy thereof to the county clerk of each county in which any portion of such district may lie, and no board of county commissioners of any county including any portion of such district shall allow another district to be formed including any of the lands of such district without the consent of the board of supervisors thereof; and from and after the date of such filing the organization of the district shall be complete, and the officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and shall hold such offices, respectively, until their successors are appointed and have qualified. *As amended, Stats. 1919, 447.*

Supervisors to take oath and file bonds.

SEC. 7. After said district has been established by proclamation and after the said board of supervisors have been duly appointed, and before entering upon the duties of their office, such board of supervisors shall take and subscribe to the official oath and swear to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the county commissioners by whom they were appointed, whenever required by law or order of the county commissioners, which oath shall be filed with the county clerk. The board of supervisors shall execute an official bond in such sum as may be fixed by the board of county commissioners. Bonds herein provided for shall be in the form prescribed by law for the official bonds of county officers.

Supervisors to organize—Right of eminent domain.

SEC. 8. Within thirty days after their election and qualification the supervisors shall meet and organize as a board, and elect a president, a secretary, and a treasurer from among their number. Each of the officers shall hold office during the pleasure of the board. The board of supervisors shall appoint a competent drainage engineer and fix his compensation and shall have the power to adopt a code of by-laws governing the conduct of the business and affairs of the district as a corporation in connection with its association with individuals in and outside of the district, and regulating the use of its drainage system by outsiders. It shall also have the power to make and execute all necessary contracts, to enter into contract with the state or the federal government, to employ and appoint such agents, officers, and employees as may be required, prescribe their duties, and generally perform such acts as shall be necessary to fully carry out the purposes of this act. The board and its agents and employees shall likewise have the right to enter upon any lands to make surveys, and may locate the necessary drainage canal or canals, and the necessary branches for the same, on any lands which may be deemed best for such location. It shall have the right also to acquire on behalf of said district, by purchase or condemnation or other legal means, all lands and other property necessary for the construction, use, maintenance, repair, and improvement of said canal or canals, drains and works constructed (including canals, drains or drain ditches being constructed by private owners), and all necessary appurtenances. The value of the land or other property taken for use by the district shall be determined, if possible, by arbitration, the arbitrators to be selected in the usual manner, and if the owner thereof

will not consent to arbitration, then by condemnation proceedings. In case of necessity for condemnation proceedings the board shall proceed in the corporate name of the district under the provisions of the law relating to eminent domain. The right of way without cost is hereby granted to any drainage district organized under this act over, along, and across any land owned by the State of Nevada. *As amended, Stats. 1917, 454; 1919, 448.*

Duties of president.

SEC. 9. It shall be the duty of the president to preside at meetings of the board, and sign all warrants ordered by it to be drawn on the treasurer for drainage money. In case of the absence of the president, the treasurer shall act as president pro tempore. *As amended, Stats. 1919, 449.*

Duties of secretary.

SEC. 10. It shall be the duty of the secretary to attend meetings of the board, to keep an accurate journal of its proceedings, to have the care and custody of its records and papers not otherwise provided for, to countersign warrants drawn upon the treasurer, and to prepare and submit to the board an annual statement, under oath, of receipts and disbursements during the year ending December 31. He shall receive for his services such compensation as the board may determine. In case of his absence the treasurer shall act as secretary pro tempore. *As amended, Stats. 1919, 449.*

Duties of treasurer.

SEC. 11. The treasurer shall subscribe to the official oath of office and give a bond to the board, with sufficient sureties and in such sum as it may require, the oath and bond to be approved by the board and filed with its secretary. The treasurer shall prepare and submit in writing a monthly report of receipts and disbursements, and pay out drainage money only upon a warrant signed by the president, and countersigned by the secretary. He shall likewise perform such other duties as the board may require, and shall receive for his services an amount to be determined by the board.

All meetings public.

SEC. 12. The board of supervisors shall meet and adjourn from time to time as the business may require. All meetings of the board must be public, and a majority of the members shall constitute a quorum for the transaction of business. All records of the board shall be open to inspection of any freeholder in said district during business hours.

Quorum of board.

SEC. 13. A majority of the board of supervisors shall constitute a quorum, and a concurrence of a majority of their number in any matter within their duties shall be sufficient, and the said board of supervisors may appoint such clerical assistants as may be proper and may employ such assistance and aid as may be found necessary.

Board to view land.

SEC. 14. Immediately after their appointment the board of supervisors shall examine all the land proposed to be drained or protected and the land over or upon which the work is proposed to be constructed, and determine:

First—If drainage and levee work as proposed in the petition, whether the starting-points, routes and termini of the proposed work and the proposed location thereof is or are in all respects proper and feasible; and, if not, what is or are so.

Second—The probable cost of the work mentioned in the petition, including all incidental expenses, and the cost of the proceedings therefor.

Third—The probable annual cost of keeping the same in repair after the work is completed.

Fourth—What lands will be injured by the proposed work and the probable aggregate amount of all damages such lands will sustain by reason of the laying out and construction of such work.

Fifth—What lands will be benefited by the construction of the proposed work, and whether the aggregate amount of benefits will equal or exceed the cost of constructing such work, including all incidental expenses, costs of proceedings and damages.

Sixth—Whether the proposed district as set out in the petition filed will embrace all the lands that may be damaged or benefited by the proposed work; and, if not, to report what additional lands will be so affected.

Claims for damages, how settled.

SEC. 14A. In the event that damages are claimed as the result of the drainage of subirrigated lands which have no, or an inadequate, water supply for surface irrigation, the supervisors may elect, in lieu of cash damages, to furnish such surface water supply, and for such purpose may appropriate sufficient waters developed by drainage therefor, condemn the necessary rights of way and construct the necessary works to divert the same to such land. *Added, Stats. 1919, 453.*

Proceedings dismissed, when.

SEC. 15. The board of supervisors of the said drainage district upon and after its examination of the said district, as hereinbefore provided, shall make a report of its findings to the board of county commissioners. If the board of supervisors shall find that although the said district has been formally proclaimed, the costs and expenses of construction and maintenance and damages accruing are more than equal to the benefits which may inure to the lands in general of said district by reason of the proposed work, it shall so report, and the proceedings shall be dismissed at the cost of the petitioners. But if the board of supervisors shall find that the benefits shall exceed the cost and expenses of construction and maintenance, and damages, it shall so report, and the board of county commissioners shall, by order, confirm such report. The board of supervisors shall thereupon proceed with the construction of the proposed drainage system. *As amended, Stats. 1919, 449.*

Supervisors to make estimates—Notice—Duty of county assessor.

SEC. 16. The board of supervisors shall, as soon as may be, view each tract of land within the district, and shall carefully consider all of the damages and benefits that each particular tract of land will receive from the construction and maintenance of such drainage system, and assess each tract of land in accordance with the benefits to be received by it, making proper allowance for damage, if there be any. After such assessment is made up, the secretary of the board of supervisors shall transmit the same to the board of commissioners and the board of commissioners shall within fifteen (15) days after the receipt thereof, cause not less than fifteen (15) days' notice to be sent by mail to each land owner in the district of the amount of benefits assessed upon the land owned by him within the district; and stating therein the time when and place where the board of commissioners will meet as a board of equalization of drainage district benefits to be made and levied upon such tract of land within the district, and such assessments shall immediately attach and become a lien upon the lands within the district. The board of supervisors shall, on or before the first Monday of February of each year, prepare a statement and estimate of the amount of money to be raised by taxation within said district for the purpose of constructing canals, drains, drain ditches, and other works, and

maintaining the same, liquidating district warrants and paying interest thereon, paying the interest upon the bonded indebtedness of the district, creating a sinking fund for redeeming such bonds, and for the purpose of maintaining and repairing drainage canals, flumes, conduits, bridges, culverts, and other works within said district and for the management and control of such drainage systems, and after adding fifteen per cent of the sum of the foregoing to provide for incidentals and possible delinquencies, shall certify the entire amount to the county assessor of the county or counties in which such district is located. It shall be the duty of such assessors to levy the entire amount required against all the lands of the district in proportion to the equalized assessments of benefits, and the taxes so levied shall be placed on the regular rolls as separate items and shall be collected at the same time and in the same manner and by the same officers as state and county taxes, and any such officer shall be liable on his bond for his neglect so to do. The county treasurer shall pay over such drainage taxes to the treasurer of the board of supervisors as soon as received by him. *As amended, Stats. 1917, 455; 1919, 449.*

Drainage tax a lien, when.

SEC. 17. All drainage taxes levied and assessed under the provisions of this act shall attach and become a lien on the real property assessed on the day upon which the taxes are levied in each year. *As amended, Stats. 1919, 450.*

County auditor to include tax.

SEC. 18. At the time of computing the tax, the county auditor shall place upon the assessment roll the district drainage taxes of the several districts of the county in which drainage taxes have been levied, as certified by the board of supervisors.

Tax equalized, how.

SEC. 19. At the time of computing the tax in the county assessment roll the county clerk shall compute the district drainage taxes of the several districts of the county in which drainage taxes have been levied. The board of county commissioners, when sitting as a board of equalization of state and county taxes, shall correct the levy of drainage taxes to conform to the equalized assessments of benefits. *As amended, Stats. 1919, 450.*

Supervisors to advertise for bids—Day labor, when.

SEC. 20. After adopting a plan of said drainage canal or canals, drains, drain ditches and works the board of supervisors shall proceed to give notice, by publication thereof, not less than twenty days, in at least one newspaper published or having a general circulation in each of the counties composing the district, and in such other publication as they may deem advisable, calling for bids for the construction of such work or of any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. Said notice shall set forth that plans and specifications can be seen at the office of the board of supervisors and that the board of supervisors will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place appointed, and the same shall be opened in public, and as soon as convenient thereafter, the supervisors shall let said work, either in portions or as a whole, to the lowest responsible bidder, or they may reject any and all bids, in which event the board of supervisors shall have the power to cause all necessary work to be done by contract approved by and under the supervision and control of said board of supervisors, said contract not to be effectual until ratified by the board of county commissioners. Contract for the purchase of material shall

be awarded to the lowest responsible bidder. Any person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board, payable to said district for its use, for 50 per cent of the amount of the contract price, conditioned for the faithful performance of said contract in accordance with its provisions. The work shall be done under the direction and to the satisfaction of the engineer, and to be approved by the board of supervisors. The supervisors shall not be interested, directly or indirectly, in any material furnished or contract awarded by the said board of supervisors; *provided*, by unanimous consent of the board of supervisors of the district it shall not be obligatory for said supervisors to call for bids, but they may employ day labor at current wage rates and purchase material at current prices for carrying out the drainage project. *As amended, Stats. 1915, 75; 1917, 456.*

Power to incur debt limited.

SEC. 21. The board of supervisors or other officers of the district shall have no power to incur any debt or liability whatsoever, either by issuing bonds or otherwise, in excess of the express provisions of this act. A debt or liability incurred in excess of the express provisions of this act shall be in the main absolutely void, except that for the purpose of organization or for the purpose of this act the board of supervisors may, before the collection of the first annual taxes, cause warrants of the district to issue, bearing interest not exceeding seven per cent per annum. Any such indebtedness, however, so created, shall in no sense be the personal obligation of the board of supervisors, but shall constitute a lien upon the lands embraced within said drainage district. The limit of the fund for such purposes shall be in amount the equivalent of an average of one and one-half dollars per acre throughout the district, and it shall be the duty of the board of supervisors, in the preparation of the first annual budget, to make provision for the payment of all such warrants and the interest thereon. *As amended, Stats. 1915, 75; 1917, 457; 1919, 451.*

Supervisors to report.

SEC. 22. The board of supervisors shall as often as once in each year after their appointment, and as much oftener as the board of county commissioners shall require, make a report to the board of county commissioners of all work done and also showing the amount of money by them collected and the manner in which the same has been expended, and, upon the filing of such report, the board of county commissioners shall set a time, not exceeding three weeks from such filing, when such report shall be heard, and the board of supervisors shall give at least ten days' notice thereof, by posting written or printed notices in not less than four of the most public places in the district, and one at the door of the courthouse of the county in which said district was organized, or by publishing the same for ten days in some paper having general circulation in the county. Upon the time fixed, the board of county commissioners shall hear said report and all objections thereto, or may continue such hearing to another time fixed, and, upon hearing such report, may require evidence to be produced by the board of supervisors in support thereof, and, if found correct, may approve such report. Upon the failure of the board of supervisors, or either of them, to make such report to the satisfaction of the board of county commissioners, as required by this section, such supervisor or supervisors on the application of any person interested, or the county commissioners, without such application, shall remove such supervisor or supervisors from office.

Canals and ditches open to public use.

SEC. 23. The use of any canal, ditch or the like, created under the provisions of this act, shall be deemed a public use and for a public benefit. The

supervisors or their representatives from the time of their appointment may go upon the lands lying within said district for the purpose of examining the same, and making surveys, and, after the organization of said district and payment or tender of compensation allowed, may go upon said lands with their servants, teams, tools, instruments, or other equipments, for the purpose of constructing such proposed work, and may forever thereafter enter upon said lands, as aforesaid, for the purpose of maintaining or repairing such proposed work, doing no more damage than the necessity of the occasion may require, and any person or persons who shall wilfully prevent or prohibit any of such persons from entering such lands for the purposes aforesaid shall be deemed guilty of a misdemeanor, and upon conviction be fined any sum not exceeding twenty-five (\$25) dollars per day for each day's hindrance, to be recovered in an action of debt in favor of such drainage district before any court of competent jurisdiction, which sum shall be paid into the county treasury for the use of said district.

Want of notice not to invalidate organization—How corrected.

SEC. 24. Whenever it shall appear to the board of supervisors that any proceedings for the organization of a drainage district, or any assessments of damages or benefits under this act, or any law of this state is invalid as to one or more tracts of land, jointly or severally owned, situated in the district, or any tract of land has been omitted from such assessment by reason of clerical error or other mistake, or want of the proper notice or notices as required by law, such want of notice shall not invalidate such organization, neither shall such assessments of benefits be lost to the district; but the board of supervisors of such district will report such conditions to the board of county commissioners, and the said board of county commissioners may make such corrections, amendments, and changes in the assessment rolls, correcting any clerical mistake or want of sufficient notice as may be just; *provided*, that where such correction, amendment, or change be made, due notice thereof be given to the persons affected thereby. *As amended, Stats. 1919, 451.*

Duty of supervisors.

SEC. 25. Any engineer employed under the provisions of this act shall receive such compensation as shall be fixed and determined by the board of supervisors. Supervisors shall receive such compensation as shall be fixed by the board of county commissioners. The salaries and all costs and expenses of the district shall be paid by the order of the board of supervisors out of the district treasury from drainage funds collected for that purpose upon warrants signed by the president and countersigned by the secretary. *As amended, Stats. 1919, 451.*

Supervisor, how removed.

SEC. 26. The county commissioners may at any time, for good cause, remove any supervisor appointed by them and appoint another in his place, and may fill all vacancies caused by death, resignation, removal or otherwise.

Penalty for injuring ditches.

SEC. 27. Any person who shall wrongfully and purposely fill up, cut, injure, destroy or in any manner impair the usefulness of any drain, ditch or other work constructed under this chapter, or heretofore constructed under any law of this state, or that may have been heretofore or may hereafter be voluntarily constructed for the purposes of drainage or protection against overflow, may be fined in any sum not exceeding three hundred (\$300) dollars for each offense, to be recovered before any court of competent jurisdiction. All complaints under this section shall be in the

name of the State of Nevada, and all fines, when collected, shall be paid over to the proper supervisors, to be used for the work so injured.

Further liabilities.

SEC. 28. In addition to the penalties provided in the preceding section, the person wrongfully and purposely filling up, cutting, injuring, destroying or impairing the usefulness of any such drain, ditch, levee or other work, obstructing or filling up of any natural stream or outlet within or beyond the drainage district, shall be liable to the supervisors having charge thereof for all damages occasioned to such work, and to the owners and occupants of lands for all damages that may result to them by such wrongful act, which may be recovered in any court of competent jurisdiction.

Supervisors may use highways.

SEC. 29. The board of supervisors shall have the right to use any part of the right of way of any public highway for the purposes of the work to be done; *provided*, such use will not permanently destroy or materially impair such public highway for public use, and if in the construction of said work the public highway or railroad or any part of the same will be benefited, the board of supervisors may assess such benefits to such public road or railroad. The amount of such road tax shall be paid out of the road tax of the district in which the public highway or part benefited lies. The banks of any drainage canal may be taken and used by the county as a public highway, but if taken by the county for such purpose the amount to be allowed the drainage district by the county for use of such banks as a public highway shall be settled by arbitration between the county and the district. *As amended, Stats. 1917, 457; 1919, 452.*

Bridges and culverts maintained.

SEC. 30. The board of supervisors shall have the power and are required to make all necessary bridges and culverts along or across any public highway or railroad which may be deemed necessary for the use or protection of the work, and the cost of the same shall be paid out of the road tax or by the railroad company, as the case may be; *provided, however*, notice shall first be given to the road or railroad authorities to build or construct such bridge or culvert, and they shall have thirty days in which to build or construct the same; such bridges or culverts shall in all cases be constructed so as not to interfere with the free flow of water through the drains of the district. Should any railroad company refuse or neglect to build or construct any bridge or culvert as herein required, the board of supervisors constructing the same may recover the cost and expenses therefor in a suit against said company before any court having jurisdiction, and reasonable attorneys' fees may be recovered as part of the cost. The proper authorities of any public road or railroad shall have the right to appeal the same as provided for individual land owners.

"Ditch" defined.

SEC. 31. The word "ditch," when used in this act, shall be held to include any drain or watercourse, and the petition for any drainage district shall be held to mean and include any side, lateral, spur or branch ditch or drain, whether opened, covered or tiled, or any natural watercourse, into which drains or ditches may enter for the purpose of outlet, whether such watercourse is situated in or outside of the district. And to secure complete drainage of the lands within any drainage district, the board of supervisors are hereby vested with full power to widen, straighten, deepen or enlarge any watercourse, or remove any obstruction or rubbish therefrom, whether such watercourse is situated in, outside of or below any drainage district;

and, when it is necessary, straighten such natural watercourse by cutting of new channel upon other lands; the value of such lands to be occupied by such new channel, and damages, if any, made by such work may be ascertained and paid in the manner that is now or may hereafter be provided by any law providing for the exercise of the right of eminent domain in force in this state. The expenses of the work provided for in this section shall be paid from moneys arising from assessments upon lands within the district or in any lawful manner acquired.

Bonds may be issued, when and how.

SEC. 32. Whenever the board of supervisors deem it expedient it shall have the power, for the purpose of constructing drains, drainage canals, or other required improvements, to issue bonds of the district to run not more than twenty years and to bear interest payable semiannually, at a rate not exceeding six per cent per annum, to be called "Drainage District Bonds," and which said bonds shall not be sold for less than ninety per cent of their par value, and the proceeds of which shall be used for no other purpose than paying the cost of construction of such drain, drainage canal, or other like work, expenses of organization and administration and interest on bonds; *provided*, that before such bonds shall be issued the board of supervisors shall request the board of county commissioners to, and the said board of county commissioners shall at once, call a special election to be held within a time not less than thirty (30) nor more than forty-five (45) days from the date of filing such request, and due notice shall be given of such election which shall be held within said district. Such notice shall require the electors to cast ballots which shall contain the words, "Drainage Bonds.....District.....Yes," or "Drainage Bonds.....District.....No," or words equivalent thereto. No person shall be entitled to vote at any such election held under the provisions of this act unless he shall be a freeholder in the district. The board of commissioners of the county in which such district was organized shall appoint the judges of election and shall provide for as many places of election as will be convenient. Such election shall be conducted as nearly as practicable in accordance with the general laws of the state; *provided*, that no particular form of ballot shall be required. The said board of county commissioners shall meet on the second Monday next succeeding such election and proceed to canvass the votes cast thereat, and if upon such canvass it shall appear that a majority of all the votes are "Drainage Bonds.....District.....Yes," the board shall, by order to be entered upon its minutes, declare that such drainage bonds have been duly and affirmatively voted upon. The expenses of such election shall be paid out of the funds belonging to said drainage district.

Any property owner may pay the full amount of the benefit assessed against his property before such bonds are issued and receive a receipt in full therefor. Such payments shall be made to the county treasurer, and it shall be the duty of the county clerk to certify to the treasurer the amount of any such assessment when requested to do so, and the county treasurer shall enter the same upon the tax-lists in his hands in a separate place provided therefor, and shall furnish the county clerk with duplicate receipts given for all assessments so paid in full. The terms and times of payment of the bonds so issued shall be fixed by the board. Said bonds shall be issued for the benefit of the district numbered thereon, and each district shall be numbered by the board of supervisors and recorded by the county clerk, said record showing specifically the lands embraced in said district and upon which the tax has not been previously paid in full. In no case shall the amount of bonds exceed the benefits assessed. Each bond issued shall show expressly upon its face that it is to be paid only by a tax

assessed, levied and collected on the lands within the district so designated and numbered and for the benefit of which district such bond is issued; nor shall any tax levied or collected for the payment of said bond or bonds, or the interest thereon, on any property outside the district so numbered, designated and benefited. The said board of supervisors shall, by resolution, provide for the issuance and disposal of such bonds and for the payment of interest thereon, the creation of a sinking fund for the ultimate redemption thereof, and for the date and manner of the redemption of said bonds. *As amended, Stats. 1915, 76; 1919, 452.*

Bonds a lien on lands, when.

SEC. 33. Whenever any such drainage district bonds shall be issued in accordance with the provisions of this title, such bonds shall constitute a lien upon all of the lands and improvements thereon within the boundaries of the district, and the board of supervisors of said district shall, from time to time, as hereinafter provided, levy a sufficient tax to pay the annual interest charge on such bonds, and in addition thereto such an amount as a sinking fund which shall, in the course of events and ultimately, amount to a sufficient sum to redeem said bonds.

Bonds, how signed.

SEC. 34. Each bond issued as provided for by section 32 of this act shall be signed by the president and secretary of the said board of supervisors and be attested by the county clerk, and said county clerk shall also make a certified statement thereon, affixing his seal of office thereto, of the total amount of assessments and rate of interest it bears, pledged for the payment of said bonds and other bonds, if any, issued; the date, number, denomination and time due of all bonds issued which are a lien upon the assessment or installments of assessments of the district; when the assessments were confirmed by the county commissioners, and the number of acres of land in the district against which said assessments were made.

SEC. 35. This act shall take effect upon passage and approval.

Land owners not disqualified.

SEC. 36. Nothing in this act contained shall be held to disqualify, upon the ground of interest, any person from being chosen or appointed to serve upon the board of supervisors by reason of his ownership of land within said district, or being interested in said drainage district, and the taxes levied or to be levied thereon. *Added, Stats. 1915, 77.*

Organized districts and "Nevada Irrigation District Act" not affected.

SEC. 72. Nothing in this act shall be deemed to affect any drainage district heretofore organized, unless such district duly elects to come under the provisions of the act as hereby amended; nor shall anything in this act be construed as affecting in any way the provisions of the "Nevada Irrigation District Act," approved March 19, 1919. *Added, Stats. 1919, 453.*

An Act consenting to the use by the United States of America of Lake Tahoe, its waters, bed, shores, and capability of use for reservoir purposes, in connection with the Truckee-Carson reclamation project of the reclamation service of the United States.

Approved March 6, 1913, 35

Consenting to use of lake—Proviso.

SECTION 1. That for the purpose of aiding the Truckee-Carson reclamation project now being carried out by the reclamation service of the United States of America, under the act of Congress approved June 17, 1902

(32 Stat. p. 384), known as the reclamation act, and acts amendatory thereof or supplementary thereto, consent is hereby given to the use by the United States of America of Lake Tahoe, situated partly in the State of California and partly in the State of Nevada, and the waters, bed, shores and capability of use for reservoir purposes thereof, in such manner and to such extent as the United States of America through its lawful agencies shall think proper for such purpose, and as fully as the State of Nevada could use the same; *provided, however*, that the consent hereby given is without prejudice to any existing rights that persons or corporations may have in Lake Tahoe or the Truckee River.

An Act relating to the issuance of permits for the appropriation of water, where the works or any part thereof to be constructed under such permits or the point of diversion or place of intended use, or any part thereof are situated without the State of Nevada.

Approved March 22, 1913, 256

Regarding permits for water—Exceptions.

SECTION 1. That no permit for the appropriation of water shall be denied because of the fact that the point of diversion described in the application for such permit, or any portion of the works in such application described and to be constructed for the purpose of storing, conserving, diverting or distributing such water, or because the place of intended use, or the lands to be irrigated by such water, or any part thereof, may be situated in any other state, when such state authorizes the diversion of water from such state for use in Nevada, but in all such cases where either the point of diversion or any of such works or the place of intended use, or the lands, or part of the lands to be irrigated by means of such water, are situated within the State of Nevada, the permit shall issue as in other cases. Except that it shall not purport to authorize the doing or refraining from any act or thing, in connection with the system of appropriation, not properly within the scope of the jurisdiction of the State of Nevada, and the state engineer thereof, to grant.

An Act to provide for cooperation in acquisition, construction and management of irrigation and drainage works between irrigation districts organized or existing under or by virtue of the laws of the State of Nevada, and contiguous or adjoining districts organized under the laws of other states.

Approved March 28, 1919, 338

May make agreements with districts of adjoining states.

SECTION 1. It shall be lawful for irrigation districts organized or existing under or by virtue of the laws of the State of Nevada to enter into agreements with contiguous adjoining irrigation districts in other states for the joint construction, acquisition, management and control of diverting, impounding or distributing works for the irrigation or drainage of the lands within the boundaries of their respective districts.

What contracts shall contain.

SEC. 2. Such agreements may be evidenced by written contracts executed on behalf of their respective boards of directors or trustees, or by resolutions entered upon their respective minutes. Such contracts or certified copies thereof and certified copies of such resolutions shall be recorded in the office of the county recorder in each county in which is situated any of the lands of said districts or any of the reservoir sites or other real property owned by said districts or acquired under the provisions of this act.

Joint or several ownership, when.

SEC. 3. Such agreements may provide for joint or several ownership or ownership in common of the property necessary or convenient for the purposes of this act, and may provide for the terms and conditions under which, or the respective proportions in which, such property shall be held. Any rights or disputes arising out of or from said agreements may be tried before and enforced by any court of competent jurisdiction in the state.

Joint meetings of directors.

SEC. 4. Any meeting of the board of directors of any such district, held in conjunction with the board of directors of the cooperating district, in the office of such district in the adjoining state, if duly and regularly called as required by law or if regularly adjourned to, shall be as lawful and valid as if held at the office of the board of directors of such district in this state.

Certain proceedings made lawful.

SEC. 5. It shall be lawful for the purposes of such cooperative action to divert water from this state for impounding in the adjoining state or otherwise for distribution to the lands of the cooperating districts regardless of the state in which such lands are situated or to divert water from such adjoining state for impounding or otherwise for distribution to the lands of such cooperating districts in this or the adjoining state.

Cooperating districts may hold property in either state.

SEC. 6. So far as may be necessary for fully carrying out the purposes of this act such cooperating district in the adjoining state may hold title to property in this state, and such cooperating district in this state may hold title to property in the adjoining state.

An Act to provide a law for the conservation of underground waters, providing for the casing and capping of artesian wells, defining the underground waters which are governed by the laws relating to the appropriation of the public waters of the state, providing a penalty for the violation of the provisions of this act, and prescribing the duties of the district attorneys in relation thereto.

Approved March 24, 1915, 323

Underground water subject to appropriation.

SECTION 1. All underground waters, save and except percolating water, the course and boundaries of which are incapable of determination, are hereby declared to be subject to appropriation under the laws of the state relating to the appropriation and use of water.

Wells to be properly encased.

SEC. 2. Every person sinking or boring an artesian well in the state shall cause to be placed in such well a proper and sufficient casing, so arranged as to prevent the caving in of such well, and to prevent the escape of water therefrom through any intervening sand or gravel stratum, and shall provide the necessary valves and appliances to prevent or control the flow of water from such well.

Water not allowed to waste.

SEC. 3. No person controlling an artesian well shall suffer or permit the waters thereof to flow to waste, unless, and so far as reasonably necessary, to prevent the obstruction thereof, or to flow or to be taken therefrom, save for beneficial purposes.

District attorney to enforce.

SEC. 4. Whenever it shall be called to the attention of the district attorney of any county of the state, by complaint or otherwise, that the proprietor of any artesian well, or any person controlling the same, has failed to install proper casing, valves, or appliances, or is permitting the waters thereof to run to waste, it shall be his duty to investigate such matters and, if it is found that any of the provisions of this act are being violated, to commence criminal action against such owner or proprietor.

Right of entry for officers.

SEC. 5. Any officer of the county or state shall have the right to enter the premises of any such owner or proprietor, where any such well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this act.

Penalty.

SEC. 6. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished as provided by law.

"Person" defined.

SEC. 7. The word "person," as used herein, shall be interpreted to mean any firm, partnership, association, company, or corporation.

WEIGHTS AND MEASURES

4814. Sealer of weights and measures—Duties—Standards.

SEC. 23. The commissioner appointed by the board of control of the Nevada agricultural experiment station is hereby designated and constituted sealer of weights and measures and shall be charged with the proper enforcement of the provisions of this act, and he may appoint such deputy or deputies as he may deem necessary therefor. He shall have the care and custody of the authorized public standards of weights and measures, and of balances and other apparatus of all kinds owned by the state under section 1 of this act. He shall maintain the state standards in good order and submit them at least once in every ten years to the national bureau of standards for verification. He shall at once, after the approval of this act, obtain from the government of the United States all standard weights and measures mentioned in this act which this state does not at that time own.
As amended, Stats. 1913, §25.

4824-7. Repealed, Stats. 1913, 259.

**The following references are to
Vol. 2, Revised Laws of Nevada.**

COURTS AND COURT OFFICERS

4828-4885. This act was adopted, with some modifications, from a statute having the identical title, enacted by the legislature of California and approved April 20, 1863 (Stats. Cal. 1863, 333). *State ex rel. Pacific Reclamation Company v. Ducker*, 35 Nev. 226 (127 P. 990).

4832. Const. art. 6, sec. 4, vests the supreme court with appellate jurisdiction in all cases in equity. This section is to the same effect. Rev. Laws, 4833, empowers the supreme court to review on appeal a judgment in a proceeding commenced in a district court when the matter in dispute is embraced in the general jurisdiction of the supreme court. Rev. Laws, 5329, provides that an appeal may be taken from a final judgment or special proceeding commenced in the court in which judgment is rendered. Rev. Laws, 6162, provides for petition for the appointment of a guardian for insane persons. Held, that such proceeding is equitable, and a judgment appointing the guardian for a mentally enfeebled person is final, so that an appeal lies. *O'Donnell v. District Court*, 40 Nev. 428, 433 (165 P. 759).

4833. Rev. Laws, 5329, provides that an appeal may be taken (2) from an order granting or refusing a new trial, etc. The former practice act of 1869 (Stats. 1869, 248), sec. 330, provides that an appeal may be taken from an order "granting or dissolving an injunction and from an order refusing to grant or dissolve an injunction." This section gives the supreme court jurisdiction of an appeal from an order "granting or refusing to grant an injunction or mandamus in a case provided for by law." Held, that section 5329 did not impliedly repeal this section. *State ex rel. Pacific Reclamation Company v. Ducker*, 35 Nev. 214, 218, 219 (127 P. 990).

See *O'Donnell v. District Court*, 40 Nev. 428, under section 4832.

4835. Power of court on appeal.

SEC. 8. This court may reverse, affirm, or modify the judgment or order appealed from as to any or all of the parties, and may, if necessary, order a new trial, and on a direct appeal from an order granting a motion to change the place of trial of an action, or refusing to change the place of trial, the court may affirm or reverse such order and order the trial to be had in the proper place. An order changing or refusing to change the place of trial shall not be appealed from on an appeal from a judgment, but only on direct appeal from the order changing or refusing to change the place of trial. Nothing in this act shall be held or so construed as to repeal, impair or change any provision in section 4 of an act entitled "An Act to amend section 387 of an act entitled 'An act to regulate proceedings in civil cases in this state, and to repeal all other acts in relation thereto,' approved March 17, 1911, the same being section 5329 of Revised Laws of Nevada, 1912," approved March 13, 1913. When the judgment or order appealed from is reversed or modified this court may make, or direct the inferior court to make, complete restoration of all property and rights lost by the erroneous judgment or order. The supreme court may make rules not inconsistent with the constitution and laws of the state for its own government and the government of the district courts; but such rules shall not be enforced until thirty days after their adoption and publication. *As amended, Stats. 1913, 274.*

Under this section, the court has power to modify a judgment for delinquent taxes by reducing the amount of the recovery, notwithstanding Rev. Laws, 3660, imposing an additional penalty in suits for the collection of delinquent taxes, and providing that the judgment shall not be satisfied except by the payment of the tax, the original penalty, the costs, and the additional penalty therein prescribed in full. *State v. Nevada Copper Belt R. R. Co.*, 41 Nev. 220, 222, 226 (168 P. 737).

4840. Cited, *Proskey v. Colonial Hotel Company*, 36 Nev. 84 (133 P. 390).

Cited, *O'Donnell v. District Court*, 40 Nev. 432 (165 P. 759).

4849. The several district courts of this state are vested by the constitution and statutes with original jurisdiction in all cases relating to the estates of insane persons, and such courts possess general power over the appointment and removal of guardians. The jurisdiction thus conferred is neither special nor limited, nor is it limited or qualified by the special act which regulates the procedure for the appointment of guardians and to prescribe their duties. *O'Donnell v. District Court*, 40 Nev. 428, 432 (165 P. 759).

4851. Under this section, a general statute limiting jurisdiction of justice of the peace, and prohibition act, secs. 7, 28 (Stats. 1919, 5, 12), in a prosecution for violation of the latter act, a justice cannot assess greater punishment than a fine of \$500 and six months imprisonment in the county jail; the district court alone being authorized to impose excess fine and imprisonment mentioned in section 7. *Ex Parte Zwissig*, 42 Nev. 360, 364 (178 P. 20, 21).

4865. Cited, *Eureka Bank Cases*, 35 Nev. 149 (126 P. 655; 129 P. 308).

4870. Nonjudicial days enumerated.

SEC. 50. No court shall be opened, nor shall any judicial business be transacted on Sunday, on the 1st day of January (New Year day), on the 12th day of February (Lincoln's birthday), on the 22d day of February (Washington's birthday), on the 30th day of May, commonly known as Memorial Day, on the 4th day of July, on the first Monday of September of each year (Labor day), on the 12th day of October, to be known as Columbus day; on the 31st day of October, to be known as Admission day; on Thanksgiving day; on the 25th day of December (Christmas day); on a day on which the primary election is held throughout the state; on a day on which the general election is held, or on any day that may be appointed by the president of the United States, or by the governor of this state, for public fast, thanksgiving or holiday, except for the following purposes:

First—To give, upon their request, instructions to a jury then deliberating on their verdict.

Second—To receive a verdict or discharge a jury.

Third—For the exercise of the power of a magistrate in a criminal action, or in a proceeding of a criminal nature.

Fourth—For the issue of a writ of attachment, which may be issued on each and all of the days above enumerated upon the plaintiff, or some person in his behalf, setting forth in the affidavit required by law for obtaining said writ the additional averment as follows: That the affiant has good reason to believe, and does believe, that it will be too late for the purpose of acquiring a lien by said writ to wait till subsequent day for the issuance of the same. And all proceedings instituted, and all writs issued, and all official acts done on any of the days above specified, under and by virtue of this section, shall have all the validity, force and effect of proceedings commenced on other days, whether a lien be obtained or a levy made under and by virtue of said writ.

If the 1st day of January, 12th day of February, 22d day of February, 30th day of May, 4th day of July, 12th day of October, 31st day of October, or the 25th day of December fall upon a Sunday, all judicial business, except for the purposes above noted, shall be suspended on the following Monday.

Nothing herein contained shall affect private transactions of any nature whatsoever. *As amended, Stats. 1911, 22; 1913, 61; 1919, 415.*

Under power given the court by subd. 2 of this section to sit on Sunday to receive a verdict, the court is necessarily authorized to remand defendant and fix a date for further proceedings. *State v. Kuhl*, 42 Nev. 185, 207 (175 P. 190, 197).

4886-7. Repealed, Stats. 1913, 314, and the following act (Stats. 1913, 313) substituted:

4902. In consideration of Rev. Laws, 3623, and this section, it was held that the term "assessment roll," as used in this section, means the whole roll for the assessment of taxes, including not only the assessment of real and personal property mentioned in Rev. Laws, 3633, but the assessment of the proceeds of mines mentioned in Rev. Laws, 3696, as well. *Esmeralda County v. Mineral County*, 37 Nev. 180, 181 (141 P. 73).

4903. Under this section, one judge of the district court has power to excuse jurors and to issue a second venire to fill out the panel. *State v. Switzer*, 38 Nev. 108, 111 (145 P. 925).

4907. Similar section (Stats. 1907, 62) cited, *State ex rel. Abel v. Eggers*, 36 Nev. 377 (136 P. 100).

4922. In view of this section and Rev. Laws, 5356, a judgment of dismissal is sufficient without a recital in the record that a motion to dismiss had been made; the presumption being that everything was done to lay the foundation for a valid judgment of dismissal, whether the making of a motion to dismiss, or something more. *Raine v. Ennor*, 39 Nev. 365, 369 (158 P. 133).

4924. The grand jury being without statutory authority to hire an accountant to audit the books of county officers, the district judge, though required by this section to charge grand juries as to their duties, part of which, Rev. Laws, 7028, provides shall be an inquiry into the wilful and corrupt misconduct of public officers, has no inherent authority to engage a private accountant to examine and audit the books of all county officers; it not appearing that there was any reasonable ground to believe that such officers were guilty of misconduct. *Stone v. Bell*, 35 Nev. 240, 245 (129 P. 458).

4926. Under this section, where a justice deemed himself disqualified to try a criminal case and called in another justice, and all parties assumed the request was lawfully made, the latter justice was at least a de facto officer, rendering a judgment of conviction valid and not subject to collateral attack on habeas corpus. *Ex Parte Simmons*, 34 Nev. 493, 495, 498 (125 P. 697).

4929. Under Const. art. 1, sec. 8, art. 2, sec. 1, as amended in 1877, art. 4, sec. 27, this section, and Rev. Laws, 4931, 4937, women, being "qualified electors," may serve on the grand jury. *Parus v. District Court*, 42 Nev. 229, 233 (174 P. 706, 707).

Cited, *McComb v. District Court*, 36 Nev. 436 (136 P. 563).

4930. The drawing of the panel of jurors in the courtroom, instead of the office of the county clerk, as provided for by this section, was not error; such statute being merely directory. *State v. Sella*, 42 Nev. 467, 469 (180 P. 980).

4931. Cited, *McComb v. District Court*, 36 Nev. 436 (136 P. 563).

See *Parus v. District Court*, 42 Nev. 229 (174 P. 707), under section 4929.

4932. This section, as amended by Stats. 1917, 32, cited, *Parus v. District Court*, 42 Nev. 242 (174 P. 710).

4933. The district court has the power to excuse jurors from attendance. *State v. Switzer*, 38 Nev. 111 (145 P. 925).

4937. See *Parus v. District Court*, 42 Nev. 229, under section 4929.

4939. Similar section (Cutting, 3877) cited, *State v. Jackman*, 31 Nev. 520 (104 P. 13).

4940. Cited, *McComb v. District Court*, 36 Nev. 432 (136 P. 563).

An Act in relation to courts of record, to prevent unnecessary delay in rendering judicial decisions, and repealing a certain act in conflict therewith.

Approved March 24, 1913, 313

To expedite decisions—Clerks to publish cases.

SECTION 1. It shall be the duty of the clerk of the supreme court, and the county clerk of each county, on or before the fifth day of each calendar

month, to publish a list of all cases submitted to the court of which he is clerk, and which remain undecided for a period of more than ninety days, together with the date of original submission, and the dates of any orders of resubmission. Such publication shall be made in a newspaper, publishing official advertising for the state or county. It shall not be necessary to publish the full title of each case, but the number of the case and so much of the title as is sufficient to identify the same shall be published.

Justices of supreme court to make affidavit.

SEC. 2. Each justice of the supreme court shall, before receiving any monthly salary, file with the clerk of the supreme court and with the state controller an affidavit in which shall be stated the number of cases submitted to the supreme court and which remain undetermined; the number of cases assigned to such justice to prepare an opinion for the court, and in which no such opinion has been prepared; that no case has been assigned to him for preparation of an opinion for a period of more than ninety days in which he has not prepared an opinion for submission to his associate members of the court.

Clerk to publish certain statement.

SEC. 3. The clerk of the supreme court shall include in his published statement of cases submitted, the number of cases assigned to each justice in which opinions have not been prepared as shown by the affidavits of the justices filed with him.

Immediate assignment.

SEC. 4. Immediately upon a case being submitted to the supreme court it shall be assigned to one member of the court for the preparation of an opinion therein.

District judge to make affidavit.

SEC. 5. Each district judge shall, before receiving any monthly salary, file with the clerk of each county within his district and with the state controller, an affidavit, in which shall be set forth the number of cases, motions or other matters submitted to him as such district judge in and for each county embraced within his district which remain undecided and that no such case, motion or matter remains undecided which has been submitted for a period of more than ninety days.

Resubmission of cases restricted.

SEC. 6. A case, motion or other matter submitted to the supreme court, or to a district judge for decision, shall not be ordered resubmitted so as to affect the provisions of this act, except by stipulation or consent of counsel in the case, filed or entered of record.

Not to affect reopening case.

SEC. 7. Nothing in this act shall affect the right of a court to reopen a case for further evidence or reargument.

Repeal of certain act.

SEC. 8. An act entitled "An act to prevent unnecessary delay in rendering judicial decisions by the courts of this state," approved March 5, 1891, is hereby repealed.

4897-9. Repealed, Stats. 1915, 277, and the following act (Stats. 1915, 276) substituted:

An Act to provide for the compiling, reporting, printing, and distribution of the decisions of the supreme court of the State of Nevada, and repealing certain acts in conflict herewith.

Approved March 22, 1915, 276

Reporters of supreme court decisions, duties of.

SECTION 1. The clerk of the supreme court and the official court reporter shall be ex officio reporters of decisions. Whenever any case is finally determined by the supreme court it shall be the duty of the reporters of decisions to make a synopsis of the opinion and decision of the supreme court in such case, together with a brief abstract of the briefs filed in the case, in so far as such briefs bear upon the points considered in the opinion of the court. A copy of the opinion, together with the synopsis of the same and the abstract of the briefs, shall be filed by the reporters of decisions with the superintendent of state printing.

Duties regarding printed volumes.

SEC. 2. The reporters of decisions shall have such decisions, synopses, and abstracts of briefs, together with an index, table of cases, and of statutes and provisions of constitutions cited, printed and bound in volumes of the size, as nearly as may be, of the volumes heretofore published, and containing not less than five hundred pages each.

Proof sheets to be furnished—Advance sheets, when.

SEC. 3. The superintendent of state printing shall furnish the reporters of decisions with proof sheets for their verification and correction before publication in permanent form. It shall be in the discretion of the superintendent of state printing, whenever the material furnished by the reporters of decisions will make a folio of sixteen pages, to print a sufficient number of such folios for the permanent volume hereinafter provided for. He may also print, on cheap paper, not for binding, a number of such folios, which may be sold by the superintendent of state printing, at a price sufficient to cover the cost of the same, to subscribers for the permanent volumes.

Title.

SEC. 4. The title of each of the above-mentioned volumes shall be "Nevada Reports," which title, together with the name of the clerk of the supreme court and the number of the volume, shall be printed on the back of each book.

Under what supervision.

SEC. 5. The work of the reporters of decisions in preparing the material for the "Nevada Reports" shall be under the direction and supervision of the justices of the supreme court.

Stenographers to assist.

SEC. 6. It shall be the duty of the stenographic clerks of the supreme court, without additional compensation, to assist the reporters of decisions in the preparation of the material for such "Nevada Reports." Immediately upon the filing of any decision by the supreme court it shall be the duty of the official court reporter to mail a copy of such decision to counsel upon each side of the case, which copy shall bear the certificate of the official court reporter to be a full, true, and correct copy of such decision.

Additional salary for official court reporter.

SEC. 7. The official court reporter, for his services as a reporter of

decisions, shall receive a salary of three hundred dollars per annum, payable in equal monthly installments, which shall be in addition to his salary as official court reporter, now prescribed by law.

Style and size of volumes—Number printed.

SEC. 8. The superintendent of state printing shall cause to be printed upon good paper and in workmanlike manner eleven hundred copies of each volume of decisions hereafter published, which shall be disposed of as follows: Six hundred copies shall be bound in buckram and shall be delivered to the secretary of state, for the purposes hereinafter specified, and five hundred copies shall be stored unbound by the superintendent of state printing, subject to the order of the secretary of state.

Distribution made—Price.

SEC. 9. On the receipt of each volume of said reports from the superintendent of state printing, the secretary of state shall distribute them in the following manner: To each state and territory, one copy; to each of the heads of departments at Washington, one copy; to the library of Congress, two copies; to each of the judges of the United States circuit and district courts in the States of Nevada, California, and Oregon, one copy; to the Nevada state library, two copies; to each state officer, justice of the supreme court, clerk of the supreme court, district judge, district attorney, county clerk, and justice of the peace in this state, one copy; and to each public library within this state, one copy. He shall distribute to literary and scientific institutions, publishers, and authors as in his opinion may secure an interchange of works which may properly be placed in the state library. The remaining copies shall be held for sale at the price of two dollars per volume.

Certain acts repealed.

SEC. 10. Those certain acts entitled respectively "An act to provide for the publication and distribution of Nevada Reports," approved March 1, 1883, and "An act to provide for compiling and reporting the decisions of the supreme court of the State of Nevada," approved March 26, 1909, and all other acts and parts of acts in conflict with the provisions of this act, are hereby repealed; *provided*, that this act shall not apply to the preparation of the 37th Nevada Report, the material for which is now on hand, but that such 37th Nevada Report shall be prepared and published in accordance with the provisions of existing laws.

4900. Repealed, Stats. 1915, 65, and the following act (Stats. 1917, 39) substituted:

An Act giving the clerk of the supreme court authority to appoint a deputy in his office.

Approved March 2, 1917, 39

Deputy allowed; no salary.

SECTION 1. The clerk of the supreme court shall have the power, under his hand and seal, to appoint one deputy in his office, without compensation; the deputy so appointed may, during the absence or inability of the clerk of the supreme court, perform all the duties of a ministerial nature requisite and pertaining to the office.

4901. Judicial districts established—Two judges for second district.

SECTION 1. The State of Nevada is hereby divided into ten judicial districts. The counties of Storey, Douglas, and Ormsby shall constitute the First judicial district; the county of Washoe shall constitute the Second judicial district; the counties of Eureka and Lander shall constitute

the Third judicial district; the county of Elko shall constitute the Fourth judicial district; the county of Nye shall constitute the Fifth judicial district; the county of Humboldt shall constitute the Sixth judicial district; the counties of Esmeralda and Mineral shall constitute the Seventh judicial district; the counties of Lyon and Churchill shall constitute the Eighth judicial district; the county of White Pine shall constitute the Ninth judicial district; and the counties of Lincoln and Clark shall constitute the Tenth judicial district. For each of said districts, judges shall be elected by the qualified electors thereof at the general election in 1918, and every four years thereafter, except as otherwise provided in this act, as follows: For each of said districts, except the Second judicial district, there shall be elected one judge. For the Second judicial district there shall be two judges elected. *As amended, Stats. 1915, 130.*

[By Stats. 1919, 78, sec. 12, Pershing County is attached to and becomes a part of the Sixth judicial district.]

4902. Salaries of district judges—Each county must contribute.

SEC. 3. The salary of each judge herein elected, or appointed to fill vacancies whenever such vacancies shall occur, shall be four thousand dollars per annum, except the judges of Second judicial district, who shall each receive a salary of four thousand five hundred dollars per annum and the judge of the Fourth judicial district, whose salary shall be four thousand five hundred dollars per annum, and the judge of the Fifth judicial district, whose salary shall be five thousand dollars per annum, and the judge of the Seventh judicial district, whose salary shall be four thousand five hundred dollars per annum; all of said salaries to be paid in equal monthly installments out of the district judges' salary fund, hereby created in the state treasury, which fund shall be supplied in the manner following, to wit: Each county in each district in the state shall contribute annually to the said fund its proportionate share of the money necessary to pay the judge or judges of its district their respective salaries monthly for such year, based upon the assessment roll of the county for the previous year, and it is hereby made the duty of the county commissioners of each county to make such arrangements and orders as may be necessary to insure the forwarding of their county's quota of said district judges' salary fund to the state treasurer at such times and in such installments as will enable the state treasurer to pay each district judge one-twelfth of his annual salary on the first Monday of each and every month, and to cause such money to be forwarded by the county treasurer, and if necessary in order to render certain the forwarding of such money in ample time to prevent any default in said monthly installments said board of county commissioners shall transfer and use any moneys in the county treasuries except those belonging to the public school fund. No salary of any judge shall be paid in advance. *As amended, Stats. 1917, 126.*

4907. Traveling expenses of district judges, how paid—Amount limited.

SEC. 7. In addition to the salary provided by law, each district judge shall be entitled to receive his necessary expenses in going to and returning from the place of holding court, his traveling expenses when traveling by private conveyance, to be estimated at the usual amounts charged by public conveyance, and also his necessary expenses at the place of holding court when holding court in any county other than that of his residence, said expenses to be allowed and paid as other claims against the state, but in no case shall such expenses exceed the amount of one thousand (\$1,000) dollars per annum for each judge. *As amended, Stats. 1907, 62; 1915, 163; 1917, 122.*

4915. But one bailiff appointed—Proviso.

SEC. 2. In all judicial districts where there are more than one judge, there shall be but one bailiff to attend both divisions of the court, said bailiff to be appointed by the joint action of the two judges; *provided*, if the two judges cannot agree upon the appointment of the same within thirty days after the approval of this act, then the appointment shall be made by a majority of the board of county commissioners. *As amended, Stats. 1919, 385.*

4926. One justice may act for another—Time limited—Registry agent—Justice of another county may act, when.

SECTION 1. Whenever any justice of the peace, in consequence of ill-health, absence from his township, or other cause, shall be prevented from attending to his official duties, it shall be lawful for him to invite any other duly qualified justice of the peace of the same county to attend to his official duties, including that of registry agent, instead of such absent or disqualified justice of the peace; *provided*, such temporary vacancy, resulting from absence or disqualification, shall not be so filled for more than thirty days at any one time; *and further provided*, that where there is only one justice of the peace in any county of this state, and he, in consequence of ill-health, absence from his township, or other cause, shall be prevented from attending to his official duties, it shall be lawful for him to invite any other duly qualified justice of the peace of some adjoining county to attend to his official duties, including that of registry agent and coroner; *provided*, that such temporary appointment, resulting from absence, disability, or other cause, shall not be so filled for more than thirty days at one time, and that the justice of the peace so temporarily acting in the place of another justice of the peace shall have no claim for services rendered by him under this act against the county in which he may so temporarily preside. *As amended, Stats. 1913, 9.*

4930. How panel of trial jurors constituted—Manner of drawing names—Summons.

SEC. 4. To constitute the regular panel of trial jurors for any term of the district court such number of names as the judge may direct shall be drawn from the jury-box. The regular panel of trial jurors may be drawn before the commencement of the term of court, and, if so drawn, the judge thereof must make and file with the county clerk an order that one be drawn, and the number of jurors to be drawn must be named in the order. The drawing shall take place in the office of the county clerk, during regular office hours, in the presence of all persons who may choose to witness it. If the panel be drawn before the commencement of the term it shall be drawn by the judge and clerk, or, if the judge so directs, by any one of the county commissioners of the county and the clerk, and if the judge directs that the panel be drawn by one of the county commissioners of the county and the clerk, the judge must make and file with the clerk an order designating the name of such county commissioner, and fixing the number of names to be drawn as trial jurors and the time at which the persons whose names are so drawn shall be required to attend in court. The drawing shall be conducted as follows:

The number to be drawn having been previously determined by the judge, the box containing the names of the jurors shall first be thoroughly shaken; it shall then be opened and the judge and clerk, or one of the county commissioners of the county and the clerk, if the judge has so ordered, shall alternately draw therefrom one ballot until of nonexempt jurors the number determined upon is obtained; *provided*, that if the officers drawing such jury deem that the attendance of any juror whose name is so drawn

cannot be conveniently and cheaply to the county obtained, by reason of the distance of the residence of such juror from the court or other cause, his name may, in the discretion of such officers, be returned to the box and in its place the name of another juror drawn whose attendance said officers may deem can be conveniently and cheaply to the county obtained. A list of the names so obtained shall be made out and certified by the officers drawing the jury, which list shall remain in the clerk's office subject to inspection by any officer or attorney of the court, and the clerk shall immediately issue a venire. Any person named in such venire who resides elsewhere than at the place at which the court is held, shall be served by the sheriff mailing a summons to such person, commanding him to attend as a juror at a time and place designated therein, which summons shall be registered and deposited in the postoffice, addressed to such person, at his usual postoffice address. And the receipt of the person so addressed for such registered summons shall be regarded as personal service of such summons upon such person, and no mileage shall be allowed for the service of such person. The postage and registry fee shall be paid by the sheriff and allowed him as other claims against the county, and the sheriff shall make return of the venire at least the day before the day named for their appearance, after which the venire shall be subject to inspection by any officer or attorney of the court. *As amended, Stats. 1879, 33; 1881, 26; 1915, 167.*

4931. Grand jury, number of—How selected—Judge to make order concerning—Venire to sheriff—Judge to select seventeen—Additional selections—Service by mail.

SEC. 8. It shall be the duty of the district judge and any one of the county commissioners of the county, as often as the public interest may require, to select from the qualified jurors of the county (whether their names are or are not upon the list selected by the board of county commissioners) twenty-four persons who shall be summoned to appear as grand jurors at such time as the judge may order; *provided*, that if the district judge deems proper he may direct any one of the county commissioners of the county and the clerk to select the grand jurors, and such county commissioner and clerk, if the judge so directs, shall select from the said qualified jurors twenty-four persons as grand jurors. If the judge directs the grand jurors to be selected by one of the county commissioners and the clerk, the judge must make and file with the clerk an order designating the name of such county commissioner, and the judge shall in said order fix the time when said grand jurors shall be required to appear; and if from any cause such county commissioner and clerk should fail to select the grand jurors, the judge and any one of the county commissioners may, at any time, select the same. A list of the names so selected as grand jurors shall be made out and certified by the officers making such selection and be filed in the clerk's office, and the clerk shall immediately issue a venire, directed to the sheriff of the county, commanding him to summon the persons so drawn as grand jurors to attend in court at such time as the judge may have directed; and the sheriff shall summon such grand jurors, and out of the number so summoned the court shall select seventeen persons to constitute the grand jury. If from any cause a sufficient number do not appear, or those who appear are excused or discharged, an additional number, sufficient to complete the grand jury, shall be selected from the said qualified jurors by the judge and clerk and summoned to appear in court at such time as the court may direct. Any person named in such venire, who resides elsewhere than at the place at which the court is held, shall be served by the sheriff mailing a summons to such person commanding him to attend as a juror at a time and place designated therein, which

summons shall be registered and deposited in the postoffice, addressed to such person at his usual postoffice address. And the receipt of the person so addressed for such registered summons shall be regarded as personal service of such summons upon such person and no mileage shall be allowed for the service of such person. The postage and registry fee shall be paid by the sheriff and allowed him as other claims against the county. *As amended, Stats. 1879, 34; 1881, 27; 1915, 168; 1919, 377.*

4932. Certain persons exempt—Certain persons liable, how may obtain exemption.

SEC. 9. Upon satisfactory proof, made by affidavit or otherwise, the following-named persons, and no other, shall be exempt from service as grand or trial jurors: Any federal or state officer, judge, justice of the peace, county clerk, sheriff, constable, assessor, recorder, attorney at law, physician, nurse, married woman or school teacher, dentist, minister of the gospel, telegraph and telephone operator, locomotive or stationary engineer, locomotive fireman, conductor, brakeman, mail carrier, engaged in the actual carrying of the United States mail, on a regular mail route, and one-half of all members of each regularly enrolled fire company in the state, said half to be determined by the several fire companies respectively, and all officers of such fire companies, not exceeding ten for each company, and also in all cities and towns wherein there is a paid fire department, after such paid fire department shall have been organized and put in operation, all members of said fire department, and all persons who are now or may hereafter become members of any exempt fireman's association, society, or organization within this state; but such exemption shall not extend to any member of such association, society, or organization, unless prior to becoming a member of the same, such member shall have served as an active fireman in some regularly organized fire department in this state for the period of three years, and also in all cities and towns in this state wherein there are volunteer fire departments, after such volunteer departments shall have been organized and put in operation, all members thereof; and also, all members thereof who may hereafter become members of any exempt fireman's association, society, or organization, within this state; but such exemption shall not extend to any member of such association, society, or organization, unless prior to becoming a member of the same such member shall have served as an active fireman in some regularly organized volunteer fire department in this state, for the period of five years; *provided*, that the entire exemption of such exempt firemen, where there is a paid fire department, shall not exceed in one town or city one hundred and fifty; and where there is a volunteer fire department the entire exemption shall not exceed, in any one town or city, fifty; *and provided further*, that any person liable to grand or trial jury duty residing sixty or more miles distant from the county-seat of his county shall be exempted from service on either grand or trial juries for the period of one year upon making affidavit to the fact that he so resides, and filing the same with the clerk of the district court of the district in which his county is situated, and paying to such clerk the sum of twenty-five dollars. Upon the receipt of such affidavit and such sum, the said clerk shall deliver to such person a certificate stating the fact of such receipts, and thereafter, for the period of one year from the date of such payment, the name of such person shall not be placed in the jury box, nor shall such person be selected as a grand or trial juror. It shall be the duty of said clerk, upon the receipt of said sum, to deliver the same to the county treasurer of his county, and the said treasurer shall immediately place the same to the credit of the general fund of said county. *As amended, Stats. 1875, 137; 1877, 176; 1881, 155; 1895, 51; 1915, 84; 1917, 32.*

4939. Juror not serving, name drawn again—Certain exemptions.

SEC. 3. When a juror drawn is not summoned or fails to appear, or after appearing is excused by the judge from serving, his name shall be returned to the box to be drawn again. The board of commissioners shall not select the name of any person whose name was selected the previous year, and who actually served on the jury by attending in court in response to the venire from day to day until excused from further attendance by order of the court, unless there be not enough other suitable jurors in the county to do the required jury duty. *As amended, Stats. 1915, 172.*

An Act to fix the fees and mileage of witnesses and jurors, providing the manner of payment thereof, and to repeal all acts and parts of acts in conflict herewith.

Approved March 26, 1919, 174

Fees and mileage of witnesses and jurors fixed.

SECTION 1. Witnesses required to attend in the courts of this state shall receive the following compensation:

For attending in any criminal cases, or civil suit or proceeding before a court of record, referee or commissioner, or before the grand jury, in obedience to a subpoena, four dollars for each day's attendance, which shall include Sundays and holidays.

For attending in a civil suit or proceeding before a justice of the peace, three dollars for each day's attendance, which shall include Sundays and holidays.

Mileage shall be allowed and paid at the rate of thirty cents a mile, one way only, for each mile necessarily and actually traveled by the shortest and most practical route; *provided, however*, that no person shall be obliged to testify in a civil action or proceeding, unless his mileage and fees for at least one day's attendance shall have been tendered or paid him, or he shall not have demanded the same; *and provided further*, that no person shall be obliged to testify in a civil action or proceeding, unless his mileage and at least one day's fees shall have been paid him, if he demanded the same.

Witness fees in civil cases shall be taxed as disbursement costs against the defeated party, upon proof by affidavit that they have been actually incurred. Costs shall not be allowed for more than two witnesses to the same fact or series of facts, nor shall a party plaintiff or defendant be allowed any fees or mileage for attendance as a witness in his own behalf.

No per diem or mileage shall be allowed or paid to witnesses in criminal cases in justice courts; *provided, however*, in preliminary examinations, where witnesses are compelled to travel a greater distance than fifteen miles one way, they shall be paid thirty cents per mile one way only, necessarily traveled, and in addition be paid four dollars a day for each day that they are actually in attendance (which shall include Sundays and holidays), which said claim, when itemized in detail, shall be allowed, audited and paid as are other claims against the county; *and provided further*, that before any such claim shall be allowed, audited or paid as herein provided, the district attorney and magistrate shall certify thereon that the person in whose behalf such claim is made was a necessary and material witness at such hearing or examination; that the hearing necessarily consumed the number of days for which compensation is claimed; that the claim is correct and that the attendance of such witness was required before such magistrate.

Grand and trial jurors—Coroners' juries—Per diem.

SEC. 2. Each person summoned to attend as a grand or trial juror, unless on or before the day he is summoned to attend he be excused by the

court at his own request from serving, shall receive (except as hereinafter provided) four dollars per day for each day he may be in attendance, which shall include Sundays and holidays, and thirty cents a mile for each mile necessarily and actually traveled by the shortest and most practical route, one way only; *provided, however*, that where the mileage does not exceed one mile no allowance shall be made therefor.

In civil cases, the per diem of each juror engaged in the trial of the cause shall be paid each day in advance to the clerk of the court, or the justice of the peace, by the party who shall have demanded the jury; but in case the party paying such fees shall be the prevailing party, the fees so paid shall be recoverable as costs from the losing party. If the jury from any cause be discharged in a civil action without finding a verdict, and the party who demands the jury shall afterwards obtain judgment, the fees so paid shall be recoverable as costs from the losing party.

Jurors actually sworn and serving in civil cases or proceedings in justice courts shall receive three dollars per day as full compensation for each day of said service.

No fees shall be allowed nor mileage paid trial jurors in criminal cases in justice courts.

The fees paid jurors by the county clerk for services in a civil action or proceeding (which he has received from the party demanding the jury), shall be deducted from the total amount due them for attendance as such jurors, and the balance only shall be a charge against the county; *provided, however*, the fees for the first day's attendance and each additional day to and including the day the jury is empaneled shall be a charge against and be paid by the county.

Coroners' jurors (with not more than three persons upon the jury) shall be entitled to receive for each day's service two dollars and fifty cents, to be certified to the county clerk by the coroner, and audited, allowed and paid as are other claims against the county; *provided, however*, that when it is necessary for a coroner's jury to travel a greater distance than one mile to view the remains, or to the place where the inquisition is held, the necessary and actual expenses incurred by the said coroner for the transportation of the jury shall be allowed, audited and paid as are other claims against the county, after having been duly certified to by the said coroner.

County clerk to keep pay-roll.

SEC. 3. The county clerk in cases in the district court shall keep a pay-roll, enrolling thereon all names of witnesses in criminal cases and of all jurors, the number of days in attendance and the actual number of miles traveled by the shortest and most practical route in going to and returning from the place where the court is held, and at the conclusion of said trial or term of court shall forthwith give a statement of the amounts due to such witnesses or jurors, after the same has been duly approved by the district judge, to the county auditor, who shall draw warrants upon the county treasurer for the payment thereof; *and provided*, that in criminal cases, where witnesses are subpoenaed from without the county, or who, being residents of another state, voluntarily appear as witnesses, at the request of the district attorney and the board of county commissioners of the county in which the court is held, they shall be allowed their actual and necessary traveling expenses incurred by them in going to and returning from the place where the court is held, and such sum per diem not exceeding four dollars as may be fixed by the district judge, who shall certify the same to the county clerk for entry upon the pay-roll hereinbefore required.

Repeal.

SEC. 4. All acts or parts of acts, either general or special, in conflict with the provisions of this act are hereby repealed.

RULES OF DISTRICT COURT**Rule X**

Cited, *Konig v. Nevada-California-Oregon Ry.*, 36 Nev. 196 (135 P. 141).
Cited, *State v. Wildes*, 37 Nev. 81 (139 P. 505; 142 P. 627).

Rule XXXIV

Cited, *Lind v. Webber*, 36 Nev. 640-644 (134 P. 461; 135 P. 139; 141 P. 458; 50 L. R. A. (N.S.) 1046).

Rule XXXVI

Cited, *Eaden v. May*, 36 Nev. 614 (135 P. 1185).
Cited, *Beco v. Tonopah Ext. Mining Co.*, 37 Nev. 199, 201 (141 P. 453).

Rule XLV

Cited, *State v. Wildes*, 37 Nev. 65, 81 (139 P. 505; 142 P. 627).

RULES OF SUPREME COURT**Rule II**

Cited, *Skaggs v. Bridgman*, 39 Nev. 310-313 (154 P. 77; 159 P. 521); *Miller v. Walser*, 42 Nev. 497 (181 P. 437, 439).

Rule III

Cited, *Skaggs v. Bridgman*, 39 Nev. 310-313 (154 P. 77; 159 P. 521).

Rule VI

Cited, *In Re Hartung's Estate*, 39 Nev. 201, 212 (155 P. 353); *Zelavin v. Tonopah-Belmont D. Co.*, 41 Nev. 1, 2 (149 P. 188; 161 P. 736); *Richards v. Vermilyea*, 42 Nev. 301 (175 P. 188; 180 P. 121).

Rule VIII

Cited, *Ward v. Pittsburg Silver Peak M. Co.*, 37 Nev. 472 (143 P. 119).
Cited, *Skaggs v. Bridgman*, 39 Nev. 310, 311 (154 P. 77; 159 P. 521); *Guisti v. Guisti*, 41 Nev. 356 (171 P. 161); *Miller v. Walser*, 42 Nev. 506, 507 (181 P. 437, 439).

Rule XIII

Cited, *Guisti v. Guisti*, 41 Nev. 349 (171 P. 161).

Rule XXV

Cited, *Gardner v. Pacific Power Co.*, 40 Nev. 343, 344 (163 P. 731); *Guisti v. Guisti*, 41 Nev. 356 (171 P. 161).

Rule XXVI

Cited, *State v. Baker and Josephs*, 35 Nev. 311, 313 (126 P. 345; 129 P. 452).

Stats. 1913, 223. Section 1 of this act divided the state into ten judicial districts and provided that for each of them judges should be elected at the general election in 1914, and, as compiled, that "for each of said districts except the Second judicial district there shall be [elected one judge. For the Second judicial district there shall be] two judges elected"—the words in brackets being omitted from the enrolled bill. Section 3 fixed the salary of the judges in the different districts, referring to "the judge" of different districts mentioned, and section 4 provided that the Second judicial district should have two district judges, with concurrent jurisdiction and power to make rules and regulations for the transaction of business in that district. Held, that the manifest intent was to provide for the election of but one judge in other than the Second district; and hence that the words in brackets, necessary to give it that effect, would be read into the act in order that it might express the true legislative intent. *State ex rel. Bartlett v. Brodigan*, 37 Nev. 245-250 (141 P. 988).

CIVIL PRACTICE

4943. A method of procedure substantially similar to that of the writ of *scire facias* is unknown to our practice. *Kapp v. District Court*, 32 Nev. 267 (107 P. 95; 25 Ann. Cas. 177).

The legislature of 1866, in appointing a commissioner to prepare and report to a subsequent session for its adoption a civil practice act, provided in the act that "the groundwork of said act shall be the code of civil procedure now in force in the State of New York and the civil practice act of California" (Stats. 1866, 158). Hence, we think that these early New York authorities, which do not appear to have been overruled by later decisions, are especially in point in construing similar provisions in our own statutes. *Ex Parte Boyd*, 36 Nev. 166 (134 P. 455; Ann. Cas. 1915A, 1277).

Cited, *McStay Supply Company v. Stoddard*, 35 Nev. 294 (132 P. 545).

Cited, *Gamble v. Silver Peak*, 35 Nev. 355 (133 P. 936).

This section renders the practice act applicable to chancery proceedings, so that process may be served by publication only in such cases as is authorized by statute; the court having no jurisdiction in other cases to order such service. *State ex rel. Sparks v. Wildes*, 37 Nev. 57, 80 (139 P. 505; 142 P. 627).

Under Const. art. 6, sec. 14, this section, Rev. Laws, 5501, 5518, and 5603, a defendant in an action under section 5588, for unlawful detainer, may show the nonexistence of the relation of landlord and tenant essential to the maintenance and may show that an instrument in form a lease was part of another instrument, and that the two constituted a mortgage, and thereby defeat the action. *Yori v. Phenix*, 38 Nev. 277, 283 (149 P. 180).

The only source of authority for any pleading and the rules for the construction thereof are drawn from the practice act. *Walser v. Moran*, 42 Nev. 119, 157 (173 P. 1149, 1150).

However strong grievances or wrongs may appeal to the conscience of the chancellor for correction and relief, averments and allegations thereof, however varied they may be, make a sufficient complaint only when squaring with the rules of this act. *Walser v. Moran*, 42 Nev. 119, 157 (180 P. 492, 493).

Plaintiff is required to state in his complaint facts which constitute his cause of action and nothing more. *Id.*

4946. Under this section, Rev. Laws, 4951, 4952, and 4956, it was held that by interpolation Rev. Laws, 4951, was to be read as if providing that, if a person to whom an action to recover a mining claim accrues is a minor, the period of disability shall not be part of the time limited for the commencement of such action, which may be commenced within two years after the disability ceases. *Wren v. Dixon*, 40 Nev. 171, 200 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).

The statute of limitations, like any other statute, is to be construed according to the manifest intention of the legislature, and, in ascertaining such intention, the language used should be construed, if possible, according to the usual meaning of the words used. *Id.*

4951-4966. Cited, *Wren v. Dixon*, 40 Nev. 212, 215 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).

4951. See *Wren v. Dixon*, 40 Nev. 171, under section 4946.

4952. See *Wren v. Dixon*, 40 Nev. 171, under section 4946.

4953. Cited, *Wren v. Dixon*, 40 Nev. 215 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).

4955. Similar section (Cutting, 3709) cited, *Small v. Robbins*, 33 Nev. 304 (110 P. 1128; 112 P. 274; 123 P. 770).

4957. Proof that plaintiff had fenced and partially improved a tract of land established a sufficient possession and occupancy to support title by adverse possession under this section, when supported by proof of the other essentials necessary to the acquisition of such title, and entitled him to a judgment quieting his title in the land against a defendant who established no title thereto. *Gander v. Simpson*, 37 Nev. 1, 4 (137 P. 514).

When two claimants of unenclosed and unimproved land assert title by deed, but it is impossible to tell from the evidence which deed conveys the legal title, neither can be said

to have established title by adverse possession, both parties having paid taxes on the land and used the same for grazing purposes. *Id.*

4960. Cited, *Small v. Robbins*, 33 Nev. 304 (110 P. 1128; 112 P. 274; 123 P. 770).

4966. See *Wren v. Dixon*, 40 Nev. 171, under section 4946.

4967. Under similar section (Cutting, 3717), it was held, though the mortgage given by a guardian for herself and on behalf of her minor ward was invalid for the reason that the order of the probate court, directing the execution of the mortgage, was without statutory authority, the proceeds of the mortgage having been applied to the satisfaction of a valid existing mortgage, a payment of interest on the invalid mortgage will be applied on the former mortgage for the purpose of tolling the statute of limitations in favor of the right of the second mortgagee to enforce a former mortgage by way of subrogation. *Lafranchini v. Clark*, 39 Nev. 49, 60 (153 P. 250).

A mortgage being a mere incident to the debt secured, an action to foreclose the mortgage is barred at the expiration of six years from the maturity of the note secured under this section. *Id.*

Cited, *Guisti v. Guisti*, 41 Nev. 354 (171 P. 161).

The agreement in question is made the subject of the action, and its violation the cause. The respondents are trustees *ex maleficio*. Therefore subdivision 4 of this section covers the case made by the complaint. *Miller v. Walser*, 42 Nev. 521 (181 P. 445), (*Sanders, J.*, dissenting opinion).

4970. Action, by one claiming to be a member of a joint adventure, to establish his interest in the property acquired by the adventure and for an accounting, was founded upon the agreement creating the trust relation between the parties, and therefore governed by the four-year statute of limitation, this section, and not by the three-year statute applicable to action based on fraud; an allegation in the complaint, that plaintiff was prevented from complying with his agreement to contribute to the adventure by the concealment by defendants of information, not changing the character of the action to one of fraud, but being a mere excuse for nonperformance by plaintiff. *Miller v. Walser*, 42 Nev. 515, 516 (181 P. 438, 443).

4986. The indorsement and delivery of a note, whether negotiable or non-negotiable, as collateral for payment of a debt, entitles the pledgee, upon default of pledgor, to maintain an action thereon in its own name, the pledgee, if not the real party in interest, within this section, being at least a trustee of an express trust under section 4987. *Winnemucca State Bank and Trust Company v. Corbeil*, 42 Nev. 378, 382 (178 P. 23, 24).

The purpose of this section is, in view of Rev. Laws, 4987, 4998, 4999, and 5001, to relax the strict rules of the common law so as to enable those directly interested in the subject-matter of the litigation to maintain the action. *Id.*

4987. See *Winnemucca State Bank and Trust Company v. Corbeil*, 42 Nev. 378, 382, 383, under section 4986.

4988. By express provision of this section, action on a non-negotiable note by its assignee is subject to any set-off or defense existing at the time or "before the notice of" the assignment. *First National Bank of San Francisco v. Nye County*, 38 Nev. 124, 141 (145 P. 932; Ann. Cas. 1917C, 1195).

4992. Under this section, as to appointment of guardian *ad litem*, such appointment may be made for an insane defendant in any case where jurisdiction of the subject-matter has been acquired. *McKibbin v. District Court*, 41 Nev. 431, 433, 434 (171 P. 374).

Under this section, the court may appoint a guardian *ad litem* for a nonresident insane defendant in a divorce suit; the action being substantially in rem. *Id.*

4995. *Idem*—When parent or guardian may sue.

SEC. 53. The father and mother jointly or the father or the mother, without preference to either, may prosecute as plaintiff for the seduction of the daughter, who, at the time of her seduction, is under the age of majority; and the guardian, for the seduction of the ward, who, at the time of her seduction, is under the age of majority, though the daughter

or ward be not living with or in the service of the plaintiff at the time of the seduction, or afterwards, and there be no loss of service. *As amended, Stats. 1913, 28.*

4996. Parent or guardian may sue for death of minor child or of ward.

SEC. 54. The father and mother jointly, or the father or the mother, without preference to either, may maintain an action for the death or injury of a minor child, when such injury or death is caused by the wrongful act or neglect of another; and a guardian may maintain an action for the injury or death of his ward, if the ward be of lawful age, when such injury or death is caused by the wrongful act or neglect of another, the action by the guardian to be prosecuted for the benefit of the heirs of the ward. Any such action may be maintained against the person causing the injury or death, or, if such person be employed by another person who is responsible for his conduct, also against such other person. *As amended, Stats. 1913, 28.*

4998. See *Winnemucca State Bank and Trust Company v. Corbeil*, 42 Nev. 378, 382, under section 4986.

4999. See *Winnemucca State Bank and Trust Company v. Corbeil*, 42 Nev. 378, under section 4986.

Cited, *Pruett v. Caddigan*, 42 Nev. 333 (176 P. 787).

5001. Cited, *State ex rel. Sparks v. Wildes*, 37 Nev. 64 (139 P. 505; 142 P. 627).

Cited, *Bernard v. Metropolis Land Company*, 40 Nev. 101 (160 P. 811).

See *Winnemucca State Bank and Trust Company v. Corbeil*, 42 Nev. 378, under section 4986.

5004. In view of this section, and Rev. Laws, 5240, 5241, a joint and several judgment in action on bond against the executor of a deceased surety and the surviving surety was not erroneous because against one *de bonis propriis* and against the other *de bonis testatoris*. *Pruett v. Caddigan*, 42 Nev. 329, 334 (176 P. 787, 788).

5015. Similar previous sections (Stats. 1895, 64; 1897, 88) cited, *Eureka Bank Cases*, 35 Nev. 149 (126 P. 655; 129 P. 308).

5016. Actions, how commenced.

SEC. 74. Civil action in the district courts shall be commenced by the filing of a complaint with the clerk of the court, and the issuance of a summons thereon; *provided*, that after the filing of the complaint a defendant in the action may appear by answer, demurrer, or notice of motion filed in the cause, excepting motions to quash service, or denying the sufficiency of process or the jurisdiction of the court over the subject-matter or the person, whether the summons has been issued or not, and such appearance shall be deemed a waiver of summons. *As amended, Stats. 1915, 321.*

On an appeal from the judgment roll alone, where the judgment roll shows that a demurrer to the complaint was presented to the court, and discloses a ruling thereon, an order sustaining a demurrer is deemed to have been excepted to, under this section, as amended by Stats. 1915, 321, an alleged error in so ruling is not required to be presented by bill of exceptions. *Miller v. Walser*, 42 Nev. 497, 505 (181 P. 437).

5017. Under *Cutting*, 3118, similar to this section, it was held that, since the defendant is required to appear within a specified time from the date of service and not from the date of the summons, the summons was not fatally defective, though it contained an incorrect date or no date at all. *Emmons v. Marbelite Plaster Co.*, 193 F. 182, 184.

Under this section it was held that, where a complaint was filed February 26, 1905, the clerk had power on March 2 following to issue a summons thereon, the first summons having been returned unexecuted, plaintiff was entitled to the issuance of another, and the fact

that the issuance of the alias summons was authorized by a prior order of the court neither added to nor subtracted from the clerk's authority conferred by statute. *Id.*

Under Cutting, 3118, similar to this, and Cutting, 3119 and 3121, similar to Rev. Laws, 5018, 5020, it was held, that since the defendant is required to appear within a specified time from the date of service and not from the date of the summons, the summons was not fatally defective, though it contained an incorrect date or no date at all. *Id.*

5018. Form of summons—Regulations regarding published summons—Attorneys to sign.

SEC. 76. The summons shall be substantially in the following form: In the.....judicial district court of the State of Nevada, in and for.....county. A. B., plaintiff, vs. C. D., defendant; summons. The State of Nevada sends greeting to said defendant: You are hereby summoned to appear within ten days after the service upon you of this summons if served in said county, or within twenty days if served out of said county but within said judicial district, and in all other cases within forty days (exclusive of the day of service), and defend the above-entitled action. Dated..... (Signed) E. F., clerk of said court, or plaintiff's attorney, as the case may be.

2. When service of the summons is made by publication, the summons shall also contain a brief statement of the object of the action substantially as follows: "This action is brought to recover a judgment dissolving the contract of marriage (or bonds of matrimony) existing between you and the plaintiff," or "quieting the title of plaintiff to the land described in the complaint," or "foreclosing the mortgage of plaintiff upon the land (or other property) described in complaint," or as the case may be.

3. Whenever the plaintiff shall be represented by a firm of attorneys, such summons may be signed by the firm name only of such firm or copartnership. *As amended, Stats. 1913, 109.*

See *Emmons v. Marbelite Plaster Co.*, 193 F. 182, under section 5017.

5020. Repealed, Stats. 1913, 110.

See *Emmons v. Marbelite Plaster Co.*, 193 F. 182, under section 5017.

5022. Summons, by whom served, proof of, return.

SEC. 80. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by any citizen of the United States over twenty-one years of age; and, except as hereinafter provided, a copy of the complaint, certified by the clerk or the plaintiff's attorney, shall be served with the summons. When the summons shall be served by the sheriff or his deputy, it shall be returned with the certificate or affidavit of the officer, of its service, and of the service of a copy of the complaint, to the office of the clerk of the county in which the action is commenced. When the summons is served by any other person, as before provided, it shall be returned to the office of the clerk of the county in which the action is commenced, with the affidavit of such person of its service, and of the service of a copy of the complaint. *As amended, Stats. 1913, 109.*

5023. Under similar section (Cutting, 3124), in an action to enforce a mechanic's lien against a foreign corporation, service was made upon its manager, who had not been appointed its agent therefor, it was held that such service was valid, since the manager of a corporation is such an agent or "other head" of a company as is contemplated by the statute; an "agent" being one who has authority to act for another. *Daly v. Lahontan Mines Company*, 39 Nev. 14, 22 (151 P. 514; 158 P. 285).

Cited, *Lawson v. Dunseath*, 41 Nev. 327 (170 P. 19).

Cited, *Wildes v. Lou Dillon Mining Co.*, 41 Nev. 366, 374 (170 P. 1046).

5024. Under Rev. Laws, 5387, and Rev. Laws, 5375, service of a cost bill should be made

upon the attorneys for the adverse party, since their authority is not terminated so long as the amount of costs remains open to settlement, and service of the cost bill upon the resident agent of a foreign corporation was irregular, if not void, since under this section only papers in the nature of process may be served upon the resident agent, and under Rev. Laws, 5475, providing that, unless otherwise apparent from the context, the word "process" means a writ or summons issued in the course of judicial proceedings, the cost bill is not a process. *Radovich v. Western Union Telegraph Company*, 36 Nev. 341, 346 (135 P. 920; 136 P. 704).

This section and Rev. Laws, 5025, fail to provide means whereby proper notice should be given, and do not constitute due process of law. *Wildes v. Lou Dillon Mining Company*, 41 Nev. 364, 366, 367 (170 P. 1046).

See *Daly v. Lahontan Mines Company*, 39 Nev. 14, under section 5023.

Under this section and Rev. Laws, 5025, it was held that service thereunder on the secretary of state did not amount to due process of law, where neither plaintiff nor the secretary of state made any effort to notify the company, and it acquired no knowledge of the suit prior to judgment, or within six months thereafter, within which it might have answered to the merits, though plaintiff knew the defendant was a Utah corporation, had brought a prior action against it, and two days before instituting the action in question made affidavit in which he swore that he was familiar with its business and affairs. *King Tonopah Mining Co. v. Lynch*, 232 F. 486, 487, 494.

5025. Cited, *Karns v. State Bank and Trust Company*, 31 Nev. 178 (101 P. 564).

See *Daly v. Lahontan Mines Company*, 39 Nev. 14, under section 5024.

See *Wildes v. Lou Dillon Mining Company*, 41 Nev. 364, under section 5024.

See *King Tonopah Mining Co. v. Lynch*, 232 F. 486, under section 5024.

5026. Affidavit held to state facts sufficient to show that S. is a necessary and proper party to the action and sufficient to support an order for publication under the provisions of this section. *Veith v. Nevada Reduction Co.*, 36 Nev. 586, 588 (137 P. 520).

An affidavit for publication of a summons does not require the same detailed statement of a cause of action as is required in a complaint. Statements well-nigh being conclusions of law may, in some instances, suffice for the affidavit. *Id.*

The provisions of this section are in the alternative and it is sufficient either that the affidavit for publication of summons shows the existence of a cause of action or shows that the defendant is a necessary or proper party. *Id.*

Affidavit as set forth held sufficient to support an order for publication under the provisions of this section. *Veith v. Nevada Reduction Company*, 36 Nev. 586, 588 (137 P. 520).

Under this section and Rev. Laws, 5027, it is jurisdictional that the affidavit for order of publication state either the residence of the defendant, whether person or corporation, or that the affiant does not know the residence. *Wildes v. Lou Dillon Mining Company*, 41 Nev. 364, 368 (170 P. 1046).

Affidavit, in husband's divorce action, that wife's address was unknown to him, and that, after due diligence, she could not be found in the state, so that summons could not be served upon her there, did not contain statement of facts contemplated by this section authorizing service by publication. *Perry v. District Court*, 42 Nev. 284, 288 (174 P. 1058).

See *King Tonopah Mining Co. v. Lynch*, 232 F. 486, under section 5024.

5027. Where husband suing for divorce knew his wife was nonresident when he filed affidavit for order of publication, wherein he did not say she was or was not, or that he did not know her residence, the court, in view of this section, acquired no jurisdiction to order publication of summons and decree. *Perry v. District Court*, 42 Nev. 284, 292, 293 (174 P. 1058).

Statutes providing for service by publication, whether in court of record or justice court, being in derogation of common law, must be strictly construed and followed to give the court jurisdiction over the person. *Id.*

See *Wildes v. Lou Dillon Mining Company*, 41 Nev. 364, under section 5026.

See *King Tonopah Mining Co. v. Lynch*, 232 F. 486, under section 5024.

5028. See *King Tonopah Mining Co. v. Lynch*, 232 F. 486, under section 5024.

5029. See *King Tonopah Mining Co. v. Lynch*, 232 F. 486, under section 5024.

5030. See *King Tonopah Mining Co. v. Lynch*, 232 F. 486, under section 5024.

5034. The personal service of summons on the defendant may be considered as equivalent to his appearance, so far as the giving of jurisdiction is concerned. *Tiedemann v. Tiedemann*, 36 Nev. 507 (137 P. 824).

5036. The only source of authority for any pleading and the rules for the construction thereof are drawn from the practice act. *Walser v. Moran*, 42 Nev. 119 (173 P. 1150).

5038. The same technical proceedings are not required in a civil action in the justice's court as is required in a criminal complaint, or in pleadings in the district court. *State ex rel. Guttery v. Langan*, 36 Nev. 577, 583 (137 P. 517).

5039. Joinder of causes of action.

SEC. 97. The plaintiff may unite several causes of action in the same complaint, when they all arise out of:

1. Contracts, express or implied; or
2. Claims to recover specific real property, with or without damages for the withholding thereof, or for waste committed thereon, and the rents and profits of the same; or
3. Claims to recover specific personal property, with or without damages for the withholding thereof; or
4. Claims against a trustee, by virtue of a contract, or by operation of law; or
5. Injuries to character; or
6. Injuries to person; or
7. Injuries to property.

8. The State of Nevada may in the same complaint unite several causes of action for demands for delinquent taxes existing against the same person or persons, partnership or corporation, whether said taxes are payable yearly or quarterly; but the causes of action so united shall all belong to only one of these classes and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated; *provided, however*, that an action for malicious arrest and prosecution, or either of them, may be united with an action for either injury to character or to the person. *As amended, Stats. 1917, 411.*

A complaint reciting one connected history of the property affected by an agreement through a series of acts on the part of defendant which contributed to and culminated in the alleged injuries to plaintiff, showing defendants have a connected and common interest in the one subject-matter of the action, and charging the defendants with an inexcusable disregard of a duty voluntarily assumed by their contract, while showing the defendant as much liable in damages for negligent breach of contract as for violation of a trust, constitutes but one cause of action. *Walser v. Moran*, 42 Nev. 111-118, 134, 141, 155, 158 (180 P. 492, 493).

Two or more causes of action cannot be united in the same complaint, unless the joinder is authorized by the practice act. *Id.*

This section is to be liberally construed, with a view to effect its object. *Id.*

A complaint stating five causes of action, the first being for breach of employment contract, the second and third being for shares of stock alleged to have been acquired by defendants in virtue of their contractual relationship with plaintiff, or for value thereof, and fifth for a discovery and accounting from defendants of all their dealings with certain property of plaintiff intrusted to them under an executory contract, is not bad for misjoinder; all such causes of action arising out of contract and being authorized by subdivision 1 of this section. *Id.*

5040. A demurrer to a complaint for misjoinder of causes of action concedes that the complaint states two or more good causes of action. *Walser v. Moran*, 42 Nev. 135 (173 P. 1149, 1156).

5045. Cited, *Clay v. Scheeline Bank and Trust Company*, 40 Nev. 17 (159 P. 1081).

5046. Answer, what to contain—Denial—Counterclaim.

SEC. 104. The answer of the defendant shall contain:

1. A general or specific denial of the allegations in the complaint intended to be controverted by the defendant, or a denial thereof according to information and belief. In denying any allegation in the complaint, not presumptively within the knowledge of the defendant, it shall be sufficient to put such allegation in issue, for the defendant to state, as to such allegation, that he has not sufficient knowledge or information upon which to base a belief.

2. A statement, in ordinary and concise language, of any new matter constituting a defense or counterclaim. *As amended, Stats. 1913, 300; 1915, 192.*

Under this section, "new matter" constituting a defense means some facts which plaintiff is not bound to prove and which go in avoidance or discharge. *Dixon v. Pruett*, 42 Nev. 345, 352 (177 P. 11, 12).

Under this section, the sufficiency of a defense is tested by whether the new matter constitutes a defense, taking the complaint as true. *Id.*

Under this section, a defendant claiming affirmative relief must plead as fully as plaintiff. *Id.*

An Act pertaining to the form of denials in pleadings in civil actions in the State of Nevada.

Approved February 28, 1913, 29

What constitutes specific denial.

SECTION 1. Whenever, in any civil action hereafter brought in any court of the State of Nevada, a specific denial of the allegations of any pleading is or may be required by any law of this state, the following shall be deemed to be a specific denial and shall be sufficient to put in issue all allegations so denied:

A denial by reference to the paragraphs sought to be denied, citing, by paragraph number, the paragraph or paragraphs sought to be denied, and stating that the party denies all matters in said paragraph or paragraphs contained; or, if it is intended to deny part and to admit part of the allegations of any paragraph, stating that the party denies all matters in such paragraph except certain allegations referred to with sufficient certainty so that it may readily be understood which parts of said paragraph are intended to be denied and which to be admitted.

What constitutes general denial.

SEC. 2. Whenever any pleading mentioned in section 1 hereof shall not be divided into numbered paragraphs, a general denial of such pleading shall be sufficient to put in issue all matters there contained; or the party denying such pleading may deny the same generally, saving and excepting such allegations as he may desire to admit, referring to the admitted allegations with sufficient certainty so that it may readily be understood which parts of said pleadings are intended to be admitted; but nothing herein contained shall be construed to permit a denial, under oath, of any allegation the denial of which, except for this statute, would constitute perjury.

5057. Reply to counterclaim, what to contain, when filed and served.

SEC. 115. When the answer contains new matter, constituting a defense, or a counterclaim, the plaintiff shall, within ten days after service of such answer or within ten days after notice of the overruling of the demurrer thereto, serve and file a reply. Said reply shall consist of:

First—A general or specific denial of the allegations in the answer, or in

the counterclaim, intended to be controverted by the plaintiff, or a denial thereof according to information and belief. In denying any allegation in the answer, or in the counterclaim, not presumptively within the knowledge of the plaintiff, it shall be sufficient to put such allegations in issue for the plaintiff to state, as to such allegation, that he has not sufficient knowledge or information upon which to base a belief.

Second—Any new matter not inconsistent with the complaint, constituting a defense to the matter alleged in the answer; or the matter in the answer may be confessed, and any new matter alleged, not inconsistent with the complaint, which avoids the same. *As amended, Stats. 1913, 300; 1915, 193.*

5058. Failure to demur or reply deemed admission.

SEC. 116. If the plaintiff fails to demur or reply to the new matter, contained in the answer, constituting a defense, the same shall be deemed admitted; and if the plaintiff fails to demur or reply to the counterclaim the same shall be deemed admitted. *As amended, Stats. 1913, 301; 1915, 193.*

Under this section, as amended by Stats. 1915, 192, an allegation of the answer undenied by the replication, must be taken as true. *Bernard v. Metropolis Land Company, 40 Nev. 89, 97 (160 P. 811).*

5065. Cited, *Walser v. Moran, 42 Nev. 119, 126 (173 P. 1150).*

5066. Cited, *Brown v. Dunn, 35 Nev. 176 (127 P. 81).*

This section applied, *Weck v. Reno Traction Company, 38 Nev. 287, 301 (149 P. 65).*

5070. While, under this section, the answer pleading as *res judicata* a judgment of a court of another state, denying divorce, as to which no presumption of regularity of proceedings obtains, need not plead the jurisdictional facts, yet, the reply denying the rendering of the judgment, they must be proven, except those admitted by the reply. *Danforth v. Danforth, 40 Nev. 436, 446 (166 P. 127).*

5075. Allegations not controverted taken as true—Exception.

SEC. 133. Each material allegation of the complaint not controverted by the answer, and each material allegation of new matter in the answer not controverted by the reply, and each material allegation in the counterclaim not controverted by the reply, must, for the purposes of the action, be taken as true. All allegations of new matter in the reply are to be deemed controverted by the adverse party. *As amended, Stats. 1915, 193.*

5081. Under this section, amendment of prayer of the complaint may be allowed at the conclusion of plaintiff's case. *Miller v. Thompson, 40 Nev. 35, 40 (160 P. 775).*

5084. This section should be very liberally construed in furtherance of its purpose. *Whise v. Whise, 36 Nev. 16, 20 (131 P. 967; 44 L. R. A. (N.S.) 689).*

Under this section, a default judgment cannot be set aside on the ground of excusable neglect unless a meritorious defense be shown. *Eaden v. May, 36 Nev. 612, 620 (135 P. 1185).*

On an application to set aside a default judgment on the ground of excusable neglect, the affidavit and testimony of defendant's counsel, that in his opinion a good and meritorious defense existed, was not a sufficient showing of a meritorious defense, especially where the action was by a married woman to recover property held by her husband in trust for her from persons who obtained it from the husband at a gambling game while he was intoxicated, since the nature of the action was such as to require a clear showing of merits. *Id.*

If orders fixing compensation of the receiver of the State Bank and Trust Company, in action by the state to wind up its affairs, were made after notice, they could be regarded as final and subject to attack only by appeal, but, if made without the personal service required by law, the state, under its police power to supervise the banking business, acting by the attorney-general pursuant to Stats. 1913, 279, providing for his intervention, and

within the time prescribed by district court rule 45, could move to set them aside pursuant to this section, for want of proper notice, and could appeal from an adverse decision, for the purpose of reducing excessive compensation allowed. *State ex rel. Sparks v. Wildes*, 37 Nev. 56, 65 (139 P. 505; 142 P. 627).

That since the decree of divorce granted plaintiff he has remarried is no ground for refusing to set aside the decree, if it was obtained through fraud on the court and defendant. *Miller v. Miller*, 37 Nev. 257, 266 (142 P. 218).

Aside from the question of fraud, the affidavit of mailing, disclosing that the copies of the summons and complaint, if mailed at all, were mailed to defendant at a different address from that directed by the order for substituted process, warrants the granting of an order vacating the default. *Id.*

Even if the copies of the summons and complaint were mailed defendant, as directed by the order for substituted process, yet her default can be set aside, if she moves to vacate it within six months of entry of the decree, and it is found that through no fault of hers she had failed to receive either such copies or notice of pendency of the action. *Id.*

Plaintiff in divorce may not complain that defendant did not sooner, after filing her motion to open the default and set aside the decree, bring it on for hearing, she having done so at the first opportunity at which the regular judge, who granted and signed the decree, was present, though, at his request, a judge of another district had been sitting. *Id.*

The court, on application to vacate a divorce decree on the ground of fraud, may not grant relief based on a private letter addressed to him and the contents of which are unknown to the opposing party or his counsel until it is filed as a basis of the order, and the court, if deeming the matters stated in the letter of sufficient importance, should direct counsel of the parties to investigate the same and present the matter by affidavit. *Blundin v. Blundin*, 38 Nev. 212, 214 (147 P. 1083).

The supreme court has no power to make a new statement on appeal, which must be settled in the lower court, or to direct that court to make one, the statement having been settled as prescribed by statute; but any relief under this section, by reason of mistake, inadvertence, surprise or excusable neglect of appellant, must be had in the lower court: a motion for a new trial there made having never been determined. *Skaggs v. Bridgman*, 39 Nev. 310, 313 (154 P. 77; 159 P. 521).

This section was made to cover cases only in which there was valid service by publication. *Perry v. District Court*, 42 Nev. 284, 287 (174 P. 1058).

Since terms of court are abolished, a judgment can be set aside or amended only as provided by this section, except for fraud, etc. *Sweeney v. Sweeney*, 42 Nev. 431, 435 (179 P. 638, 639).

Amendment of pleadings in federal court is governed by Rev. St. sec. 954, and not by the law of the state, under the conformity act (Rev. St. sec. 914). *Truckee River G. E. Co. v. Benner*, 211 F. 79, 81.

The allowance or refusal of leave to amend pleadings in actions at law is discretionary with the trial court, the exercise of which is not reviewable except in case of fraud or abuse of discretion. *Id.*

Certain amendments held not objectionable as setting forth a new and different cause of action. *Id.*

5088. Under this section, an order of arrest can be based both upon a verified complaint and an affidavit for arrest and if both, taken together, are sufficient to justify the order, it is not improperly issued. *Ex Parte Boyd*, 36 Nev. 162, 164 (134 P. 455, Ann. Cas. 1915A. 1277).

5090. See *Ex Parte Boyd*, 36 Nev. 162, under section 5088.

5112. Under this section and Rev. Laws, 5113, if the only ground of the motion to vacate is because the affidavit upon which the order for arrest was based was insufficient, the court, on the hearing of the motion, will look alone to the affidavit, and, if insufficient, defendant will be discharged; but if the motion contains the further ground that the actual facts do not justify his arrest, the motion will be heard upon affidavits of defendant, counter affidavits of plaintiff, and any other evidence, and defendant is not entitled to be

discharged if the proof justifies his being held, although the original affidavit was insufficient. *Ex Parte Boyd*, 36 Nev. 162-164 (134 P. 455; Ann. Cas. 1915A, 1277).

5113. See *Ex Parte Boyd*, 36 Nev. 162, under section 5112.

5124-5135. Cited, *State ex rel. Sugarman v. Lamb*, 37 Nev. 20 (138 P. 907).

5127. In an action for the possession of personal property, the sheriff, after seizing it, redelivered it to defendant, although defendant's sureties on his undertaking had not justified themselves before the clerk or the court as required by statute. The property still remained within the county. Held, that under this section the sheriff will by an appropriate writ of mandamus be compelled to retake the property and deliver it to plaintiff; the defendant having waived exceptions to plaintiff's sureties and not having established his own right to a return. *State ex rel. Sugarman v. Lamb*, 37 Nev. 19, 25 (138 P. 907).

5128. Under this section and Rev. Laws, 5129 and 5130, it was held that justification by defendant's sureties upon notice to plaintiff was a condition precedent to the delivery of the property to him; the plaintiff not being required to justify his sureties unless called upon by the defendant. *State ex rel. Sugarman v. Lamb*, 37 Nev. 19, 21 (138 P. 907).

5129. See *State ex rel. Sugarman v. Lamb*, 37 Nev. 19, under section 5128.

5130. See *State ex rel. Sugarman v. Lamb*, 37 Nev. 19, under section 5128.

5133. Under this section, the sheriff may retain possession of property taken in claim and delivery until his fees and expenses are paid. *State ex rel. Sugarman v. Lamb*, 37 Nev. 20, 26 (138 P. 907).

5134. Cited, *State ex rel. Sugarman v. Lamb*, 37 Nev. 23 (138 P. 907).

5143. Where a district court had granted a temporary injunction against taxing officers of the county and state, and had overruled the attorney-general's demurrer to the complaint, the latter had an adequate remedy under this section and Rev. Laws, 5329, giving them immediate appeal from an order refusing such motion, so that he cannot maintain prohibition, even though the public interests are so great that he cannot rest on his demurrer and appeal from the judgment thereon, thereby losing his right to plead to the merits. *State ex rel. Thatcher v. District Court*, 38 Nev. 323, 325 (149 P. 178).

5147. Similar statute (1869, 196, sec. 123) authorizes an attachment in an action on an unsecured contract for the direct payment of money, and, if so secured, when such security has been rendered nugatory by the act of the defendant. In an action on a note secured by certain stock, an attachment was issued on an affidavit, which, after setting out the making of the note and defendant's failure to pay it, recited that it was secured by 50,000 shares of stock which were afterwards surrendered and placed in escrow by defendant and rendered nugatory. Defendant applied to dissolve the writ and filed affidavit that plaintiff accepted the stock certificate as security for the note, and at all times had retained the same as such security, that it had never been transferred on the books of the company, and was later withdrawn from plaintiff and placed in escrow under an agreement for sale; either the proceeds or the certificate to be returned to plaintiff. Held, that such escrow agreement, if carried out, would enable plaintiff to deduct the proceeds of the stock from the note and interest, and hence it did not render the security nugatory, so as to justify an attachment. *First National Bank v. Murphy*, 34 Nev. 461, 467 (129 P. 365).

5152. Under this section, the custody required of the attaching officer is such as to enable him to retain and assert his power over the property so that it cannot be withdrawn or taken by another without his knowledge. *Green v. Hooper*, 41 Nev. 12, 20 (167 P. 23).

It is the duty of the attaching officer to take the property attached into his possession, and the lien of the attachment, as to subsequent purchasers and other creditors, is ineffective if the officer abandons his possession. *Id.*

5162. Proceedings when defendant recovers judgment.

SEC. 220. If the defendant recover final judgment against the plaintiff, that is, final in the full sense of ending the litigation, whether the judgment becomes final in the trial or the appellate court, then any undertaking received in the action, all the proceeds of sales and money collected by the

sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom, but until a judgment in a case becomes final as above stated, the attachment therein shall hold good unless it be otherwise legally released, discharged or dissolved, as elsewhere provided in the said act approved March 17, 1911.

This act shall also be applicable to justice courts. *As amended, Stats. 1913, 30.*

5185. Under similar section (Cutting, 3234) it was held that this section does not mean that the defendant can apply for the discharge only at the time he appears, and no later. *Goldfield-Mohawk Mining Company v. Frances-Mohawk M. & L. Co.*, 31 Nev. 348, 358 (102 P. 963).

This statute (Cutting, 3227) provides that the sheriff shall make a full inventory of the property attached, and that to enable him to make returns as to debt from credits attached, he shall request the party owing the debt, etc., to give him a memorandum of the same. Cutting, 3234 (similar to this) provides that defendant may apply for an order to discharge the attachment upon the filing of a bond, and that an order may be made releasing the property, debts or credits attached. Held, that a contention that in giving an undertaking only property in the hands of the sheriff could be released, and not property in a bank which had been garnisheed, was of no merit. *Id.*

An Act regulating the compensation of receivers of corporations in cases of involuntary dissolution or liquidation.

Approved March 29, 1915, 507

To receive certain percentage.

SECTION 1. A receiver of a corporation appointed in any proceeding heretofore or hereafter instituted for the involuntary liquidation or dissolution of such corporation and the winding up of its affairs, in addition to his necessary expenses, shall receive as compensation for his services not to exceed two per cent of all moneys or sums received by him, and an additional two per cent of all moneys paid out by him in dividends; *provided, however*, in case of extraordinary services rendered by the receiver the court may allow him an additional one per cent upon final accounting of all moneys disbursed by him by way of dividends. Any order, judgment, decree, or proceeding allowing any greater or further compensation than that provided in this act to any receiver of any insolvent corporation appointed in a proceeding for its involuntary liquidation or winding up shall be void.

5194. Under this section and Rev. Laws, 5201 and 5237, where plaintiff, in an action for divorce, failed to appear at the trial, defendant, who had filed a cross-complaint for divorce and injunction, was entitled to proceed to judgment for the full relief asked in the cross-complaint, though plaintiff alone had acquired the requisite residence within the state for the maintenance of an action for divorce. *State ex rel. Howe v. Moran*, 37 Nev. 404, 407. 411 (142 P. 534).

Defendant, in such case, was entitled to prove the residence of the plaintiff in order to support the jurisdiction of the court to proceed to judgment. *Id.*

5199. In condemnation proceedings to assess the damages for a right of way taken by a power company, the complaint in answer contained names of commissioners to assess compensation and damages as provided by Stats. 1907, 279, the act governing at the time. Rev. Laws, 5606-5629, relating to the subject of eminent domain, enacted after institution of the proceedings, provided in section 5624 that the provisions of the Revised Laws relative to civil actions should constitute the rules of practice in proceedings under said chapter. Under this section and Rev. Laws, 5818, it was held that the action of the trial court in calling the jury was justified; since the general rule against retrospective construction

of the statute does not apply to statutes relating only to remedies. *Truckee River G. E. Co. v. Durham*, 38 Nev. 311, 316 (149 P. 61).

5201. See *State ex rel. Howe v. Moran*, 37 Nev. 404, under section 5194.

5210. The party who has the burden of proof is universally allowed to open and close, and such burden, in condemnation proceedings to assess damages, was upon the defendant; moreover, under this section the matter was within the discretion of the court, and, in the absence of showing of abuse, its ruling permitting the defendant to open and close should not be disturbed. *Truckee River G. E. Co. v. Durham*, 38 Nev. 312, 318 (149 P. 61).

5222. When general or special verdict may be rendered.

SEC. 280. In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may, in its discretion, direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may, in its discretion, instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered upon the minutes. Where a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court must give judgment accordingly. *As amended, Stats. 1915, 110.*

Under this section if a finding in defendant's favor on special interrogatories would not be inconsistent with a general verdict for plaintiff, a failure to find at all on such interrogatories cannot control such general verdict. *Week v. Reno Traction Co.*, 38 Nev. 287, 300 (149 P. 65).

The inconsistency between special findings and the general verdict which, under this section, as amended by Stats. 1915, 110, makes the former controlling, must be irreconcilable; one that no reasonable hypothesis or inference under the pleadings can remove. *Crosman v. Southern Pacific Company*, 42 Nev. 92, 103 (173 P. 226).

5226. Trial by jury waived, when and how.

SEC. 284. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, or for the recovery of specific real or personal property, with or without damages, and with the assent of the court in other actions, in the manner following:

1. (a) If a party or his attorney is present at the setting of the cause for trial or has notice thereof, then by failing to demand a trial by jury at or before such setting.

(b) If such party or his attorney is not present at or has no notice of such setting, then by failing to demand a trial by jury within five days after receiving written notice of such setting.

2. By failing to appear at the trial.

3. By written consent, in person or by attorney, filed with the clerk.

4. By oral consent, in open court, entered in the minutes. *As amended, Stats. 1919, 239.*

Under this section, where condemnation proceedings were set for hearing on defendant's motion, and he did not demand a jury, and the case was continued until the order setting it for hearing was vacated, application being thereafter made by plaintiff for an order appointing commissioners to fix damages, at which time defendant requested that a jury be called to determine compensation, whereupon the court entered an order that a jury be called, its action was proper, since, when the order vacating the setting of the case for trial was entered, the case was left in the status in which it was before set for trial, and defendant's right to a jury was revived. *Truckee River G. E. Co. v. Durham*, 38 Nev. 312, 317 (149 P. 61).

The trial court did not abuse its discretion in refusing to set aside a waiver of jury trial

made in open court, where the application was not made until the trial. *DeRemer v. Anderson*, 41 Nev. 288, 302 (169 P. 737).

Where the right to a jury trial is waived by oral consent in open court, entered in the minutes pursuant to this section, setting aside such waiver rests in the trial court's discretion. *Id.*

5227. Question of fact must be decided, when.

SEC. 285. Upon a trial of a question of fact by the court, its decision must be given within thirty days after the cause is submitted for decision. The court may, however, at any time before a notice of appeal is served and filed, or before a motion for a new trial is ruled upon, if such motion is made, add to or modify the findings in any respect, so as to make the same conform to the issues presented by the pleadings, and to the evidence adduced at the trial. No such additions to, or modifications of, the findings shall be made unless a notice in writing specifying generally the additions or modifications desired shall have been served on the adverse party or his attorney of record. *As amended, Stats. 1915, 218.*

Appellant company held not prejudiced by trial court's refusal to find as requested, especially in view of exhaustive decision covering all issues, and judicial finding, made before motion for new trial was disposed of, in conformity to particular issues of title to property in suit made by complaint and cross-complaint. *Moore v. Rochester Weaver M. Co.*, 42 Nev. 180 (174 P. 1017).

5230. Under *Cutting*, 3279, 3280 (similar to this), the court in quo warranto proceeding to contest an election to a state office, has jurisdiction to appoint a commissioner to count the undisputed ballots and report to the court for its information the actual ballots in dispute as well as the fact and number of undisputed ballots. *State ex rel. Springmeyer v. Baker*, 35 Nev. 300, 308 (126 P. 345; 129 P. 452).

The compensation due such commissioner may be taxed as costs against the defeated party; but the court may not order relator to pay the costs in advance, though the commissioner may withhold his report until payment is made by the party calling for it, and any compensation advanced by either party to receive and use the report will be recovered as other costs from the losing party. *Id.*

5231. See *State ex rel. Springmeyer v. Baker*, 35 Nev. 300, under section 5230.

5236. Judgment on failure to answer, how to be entered.

SEC. 294. Judgment may be had, if the defendant fail to answer the complaint, as follows:

1. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the complaint, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section 89.

2. In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant; and thereafter the plaintiff may apply at the first, or any subsequent term of the court, for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, be necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury;

or if, to determine the amount of damages the examination of a long account be necessary, by a reference, as above provided.

3. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time within which, by law, the defendant is required to answer, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the state, shall require the plaintiff, or his agent, to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover. The word "answer," used in this section, shall be construed to include any pleading that raises an issue of law or fact, whether the same be by general or special appearance. *As amended, Stats. 1913, 110.*

This section does not govern in actions where personal service is had upon a nonresident, even though the statute declares such service equivalent to publication, for there could be no proof as in case of publication, and the obvious intent of the statute was to protect the rights of nonresidents; hence a default in such case may be entered by the court. *Long v. Tighe, 36 Nev. 129, 133, 134 (133 P. 60).*

Under this section, while the filing of a demurrer is equivalent to the filing of an answer in preventing a default, where a demurrer to the complaint was sustained and a demurrer to an amended complaint was overruled, the demurrers had served their purpose and had no further effect, and upon defendant's failure to answer within the time allowed by the court the clerk could enter judgment by default. *Esden v. May, 36 Nev. 611, 614-618 (135 P. 1185).*

Since this section is not made applicable to justices' court by reason of Rev. Laws, 5815, because Rev. Laws, 5754, sets forth a separate and complete system governing trials similar to the system prescribed by this section, and when a separate and independent section is found in the practice act covering the matter of pleading in the justice court, it must be construed that the legislative intent was to limit the provisions in this section to the district court; the relator's special appearance challenging the jurisdiction of the justice court was not affected by the provisions of this section and was not an answer. *Regan v. King, 39 Nev. 216, 219-221 (156 P. 688).*

Cited, *Bergman v. Kearney, 241 F. 896.*

5237. See *State ex rel. Howe v. Moran, 37 Nev. 404*, under section 5194.

A plaintiff who finds that he cannot sustain the cause of action alleged, and thinks there are sufficient facts to sustain a different kind of action, may, under our statute, abandon his case, whereupon a judgment of nonsuit will be entered by the court. Such a judgment is no bar to another action. *Christensen v. Duborg, 38 Nev. 411 (150 P. 306).*

Cited, *Bernard v. Metropolis Land Co., 40 Nev. 96 (160 P. 811).*

A judgment apparently on the merits dismissing the libel will not be considered one of nonsuit on a motion of defendant, as authorized by this section, it not appearing defendant made any such motion. *Danforth v. Danforth, 40 Nev. 435, 442 (166 P. 127).*

5239. Under this section and Rev. Laws, 5240, providing that, in an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others where a several judgment is proper, in an action against partners, the court did not exceed its jurisdiction by rendering judgment against one of them. *Conway v. District Court, 40 Nev. 395, 398 (164 P. 1009).*

5240. See *Conway v. District Court, 40 Nev. 395*, under section 5329.

In view of this section and Rev. Laws, 5241, a joint and several judgment in an action on a bond against the executor of a deceased surety and the surviving surety was not erroneous because against one *de bonis propriis*, and against the other *de bonis testatoris*. *Pruett v. Caddigan, 42 Nev. 329, 334 (176 P. 788).*

5241. See *Pruett v. Caddigan, 42 Nev. 329*, under section 5240.

5252-5254. Cited, *Esmeralda County v. Mineral County*, 37 Nev. 181 (141 P. 73).

Cited, *State ex rel. Brown v. Nevada Industrial Commission*, 40 Nev. 226 (161 P. 516).

5273. Cited, *Daly v. Lahontan Mines Co.*, 39 Nev. 20.

Where demurrer to complaint for libel was sustained, all the matters pertaining to the proceedings in the trial court so far as affecting the plaintiff's rights are embraced in the "judgment roll" within subdivision 2 of this section, so that under Stats. 1915, 166, sec. 11, permitting an appeal on the judgment roll alone, it was unnecessary to file assignments of error as required by section 13 of such act. *Talbot v. Mack*, 41 Nev. 245, 253, 254 (169 P. 25).

5315. Section 5316 must be read in connection with this section. *Miller v. Miller*, 36 Nev. 118 (134 P. 100; 136 P. 978).

5316. An application to the supreme court, to have exceptions settled according to the facts, upon the ground that the trial court has refused to settle the same, to be sufficient should specifically set forth: First, the exception during the trial or proceeding to a ruling actually made; second, the facts supporting the exception; third, that such exception and the facts supporting it were in truth and in fact presented to the trial judge for settlement and allowance; fourth, the actual settlement by the trial court, or judicial officer of the statement; fifth, that on the settlement of the statement or bill the trial judge, or judicial officer, has failed or refused to allow the exception as stated; and, sixth, that the exception refused by the trial judge, and which the applicant seeks to prove, is material to and affects the substantial rights of the parties. *Miller v. Miller*, 36 Nev. 115, 118, 119, 124, 125, 127, 128 (134 P. 100; 136 P. 978).

5317. Under similar section (Cutting, 3860), it was held the state appealing from an order granting a new trial must present a bill of exceptions or statement on appeal to show wherein the order of the trial court was erroneous, or otherwise the verdict will be affirmed. *State v. Orr*, 34 Nev. 297, 300 (122 P. 73).

5318. Matters deemed excepted to.

SEC. 376. The verdict of the jury, the final decision in an action or proceeding, the findings of fact, conclusions of law made by the court, findings of the referee, an interlocutory order or decision finally determining the rights of the parties, or some of them; an order or decision from which an appeal may be taken; an order sustaining or overruling a demurrer; allowing or refusing to allow an amendment to a pleading, striking out or refusing to strike out a pleading, or a portion thereof, refusing a continuance, an order made upon ex parte application, an order or decision made in the absence of a party, an order granting or denying a nonsuit, or a motion to strike out evidence or testimony, and a ruling sustaining or overruling an objection to evidence, rulings of the court as to the competency of jurors, are deemed to have been excepted to. *As amended, Stats. 1915, 321.*

On an appeal upon the judgment roll alone, where the judgment roll shows that a demurrer to the complaint was presented to the court and discloses a ruling thereon, an order sustaining a demurrer is deemed to have been excepted to under Stats. 1915, 321, amending this section, and alleged error in so ruling is not required to be presented by bill of exceptions. *Miller v. Walser*, 42 Nev. 505 (181 P. 437, 439).

5319-5324. Cited, *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 84 (148 P. 345; 153 P. 434).

5320. Cited, *Beco v. Tonopah Ext. M. Co.*, 37 Nev. 200 (141 P. 453).

It was held under this section and Rev. Laws, 5321, 5322, 5325, 5328, 5331, 5335, and 5343, that where defendant filed a "memorandum of exceptions" submitted and relied upon in support of its motion for a new trial, which was verified by its attorney, but not settled by the court, the memorandum could not be considered as filling the office of bills of exceptions or a statement on appeal. *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 80, 85 (148 P. 345; 153 P. 434).

Under Rev. Laws, 5323, this section, and Rev. Laws, 5321, it was held that, as motion for a new trial for insufficiency of evidence can be made only on the minutes of the court, a

motion for a new trial "on the ground of insufficiency of the evidence to justify the decision, judgment, and findings of fact and conclusions of law" is sufficient, although it failed to state that the motion would be made on the minutes of the court. *Saval v. Blume*, 41 Nev. 215, 216-219 (168 P. 909).

Under similar section (Stats. 1869, 226, sec. 195), held that, as motion for a new trial for insufficiency of evidence can be made only on the minutes of the court, a motion for a new trial "on the ground of insufficiency of the evidence to justify the decision, judgment, and findings of fact and conclusions of law" is sufficient, although it failed to state that the motion would be made on the minutes of the court. *Id.*

5321. See *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 80, under section 5320.

The state appealing from an order granting a new trial must present a bill of exceptions or statement on appeal to show wherein the order of the trial court was erroneous, or otherwise the verdict will be affirmed. *State v. Orr*, 34 Nev. 297, 300, 301 (122 P. 73).

See *Saval v. Blume*, 41 Nev. 212, under section 5320.

Rev. Laws, 5322, requiring service of memorandum of errors upon adverse party, has reference only to errors committed at the trial under subdivision 7 of this section, and not error committed in arriving at an erroneous conclusion as to the legal effect of all of the evidence in the case, the making of findings, or entering of judgment. *Guisti v. Guisti*, 41 Nev. 357 (171 P. 161).

5322. Motion to strike assignment of errors, not filed in the time prescribed by Stats. 1915, 166, sec. 13, and no memorandum of errors being served on respondent pursuant to this section, is well taken. *Gardner v. Pacific Power Co.*, 40 Nev. 343, 344 (163 P. 731).

An ex parte order, extending, as authorized by this section, the time within which a mover for a new trial shall serve on the adverse party a memorandum of exceptions and errors, though properly granted, is without effect until notice thereof has been given to the adverse party, as required by district court rule 36. *Beco v. Tonopah Ext. M. Co.*, 37 Nev. 199-201 (141 P. 453).

See *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 80, under section 5320.

See *Guisti v. Guisti*, 41 Nev. 349, under section 5320.

Cited, *Gill v. Goldfield Mines Co.*, 43 Nev. — (176 P. 785).

5323. Under similar section (Cutting, 3292), held, where there was no assignment that the judgment was not supported by the evidence, and no motion for a new trial or statement on motion for a new trial under which the evidence could be reviewed by the trial court or the supreme court, the question whether the evidence supports the judgment is not properly before the supreme court. *Finnegan v. Ulmer*, 31 Nev. 523, 524 (104 P. 17).

See *State v. Orr*, 34 Nev. 297, under section 5317.

Though the provisions of Cutting's Compilation, sec. 3292, authorizing an enlargement of the time for service and filing of a motion for a new trial by stipulation of the parties, or on good cause shown, by the court or judge before whom the cause was tried, was not carried forward into the Revised Laws, yet where the parties stipulated for an extension of time beyond the ten days specified in this section within which defendant might serve and file his notice of intention to move for a new trial, such stipulation was a waiver of plaintiff's right to object that the motion was not in time. *Torp v. Clemons*, 37 Nev. 474, 476 (142 P. 1115).

Similar section (Practice Act, 197, C. L. 1873) cited. *McLeod v. District Court*, 39 Nev. 349 (157 P. 649).

See *Saval v. Blume*, 41 Nev. 212, under section 5320.

Where an appeal is based upon alleged errors relating to evidence, as pointed out under this section, a motion for new trial must be made and determined before the appeal is taken as required by section 5328. *Gill v. Goldfield Con. Mines Co.*, 43 Nev. — (176 P. 787).

5325. Similar section (Cutting, 3422) cited, *State ex rel. Pacific Reclamation Company v. Ducker*, 35 Nev. 220 (127 P. 990).

An order quashing personal service of summons, made on a nonresident defendant while within the state, was a final order from which an appeal would lie under this section. *Tiedemann v. Tiedemann*, 35 Nev. 259, 265 (129 P. 313).

See *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 80, under section 5320.

Cited, *Shute v. Big Meadow Inv. Co.*, 41 Nev. 362 (170 P. 1049).

Where judgment in justice's court went against defendant, and he brought certiorari against the justice to review the judgment in the district court which dismissed the writ, a bond on appeal to the supreme court, bearing the title of the cause in the justice's court, gave no jurisdiction of the appeal in view of this section and Rev. Laws, 5330, prescribing method of appeal. *Mazade v. Justice Court*, 41 Nev. 481, 483 (172 P. 378).

5325-5361. Cited, *Ward v. Silver Peak G. M. Co.*, 39 Nev. 84 (148 P. 345; 153 P. 434).

5325-5361 (Chap. 46). Cited, *O'Donnell v. District Court*, 40 Nev. 432 (165 P. 759).

5327. Under the provisions of this section, the word "aggrieved" refers to a substantial grievance. The imposition of some injustice, or illegal obligation or burden, or the denial of some equitable or legal right, would constitute a grievance in the contemplation of the statute. *Esmeralda County v. Wildes*, 36 Nev. 526, 531 (137 P. 400, 405).

Cited, *State ex rel. Sparks v. Wildes*, 37 Nev. 73 (139 P. 505; 142 P. 627).

5328. Under this section, where the abstractness of an instruction was not urged as ground for a new trial, the appellate court could not consider the point. *Week v. Reno Traction Co.*, 38 Nev. 286, 298 (149 P. 65).

See *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 80, under section 5320.

It may be presumed that the legislature adopted this section with full knowledge that the existing practice was otherwise. *Gill v. Goldfield Con. Mines Co.*, 43 Nev.—(176 P. 785-787).

Although this section and Stats. 1915, 164, relate to the same subject, both being designed to correct errors on appeal, the purpose of the former was to require a motion for new trial before taking appeal, while the object of the latter was to provide the method of appeal by bills of exception so that the latter does not repeal the former by conflicting objects. *Id.*

Where an appeal is based upon alleged errors relating to evidence as pointed out under Rev. Laws, 5323, a motion for a new trial must be made and determined before the appeal is taken, as required by this section. *Id.*

5329. Time within which appeal may be taken.

SEC. 387. An appeal may be taken:

1. From a final judgment in an action or special proceeding commenced in the court in which the judgment is rendered, within six months after the rendition of the judgment.

2. From an order granting or refusing a new trial, or granting or refusing to grant or dissolving or refusing to dissolve an injunction, or appointing or refusing to appoint a receiver, or dissolving or refusing to dissolve an attachment, or changing or refusing to change the place of trial, and from any special order made after final judgment, within sixty days after the order is made and entered in the minutes of the court.

3. From an interlocutory judgment, order or decree hereafter made or entered in actions to redeem real or personal property from a mortgage thereof or lien thereon, determining such right to redeem and directing an accounting, and from an interlocutory judgment in actions for partition which determines the rights and interests of the respective parties and directs partition, sale or division to be made, within sixty days after the rendition of the judgment or order.

4. If an order granting or refusing to grant a motion to change the place of trial of an action is not directly appealed from within the said sixty days, there shall be no appeal therefrom on appeal from the judgment in the case or otherwise, and on demand or motion of either party to an action the court or judge making the order changing or refusing to change the place of trial of an action shall make an order staying the trial of the action until the time to appeal from such order changing or refusing to change,

shall have lapsed; or if an appeal from such order is taken until such appeal shall, in the appellate court, or in some other manner, be legally determined. *As amended, Stats. 1913, 113.*

Held, this section does not impliedly repeal Rev. Laws, 4833, authorizing an appeal from an order granting an injunction, so that an appeal lies from such order. *State ex rel. Pacific Reclamation Co. v. Ducker*, 35 Nev. 214, 218, 222-224 (127 P. 990).

It cannot be said that this section was intended to cover the whole subject as to appeals so as to make it operate to repeal all other statutes on the subject, including Rev. Laws, 4833, and Rev. Laws, 4564, 6089, 6162, and 6163 providing for appeals from certain other orders. *Id.*

Where a district court had granted a temporary injunction against taxing officers of the county and state, and had overruled the attorney-general's demurrer to the complaint, the latter had an adequate remedy under Rev. Laws, 5143, authorizing a motion to set aside the temporary injunction, and Rev. Laws, 5329, giving an immediate appeal from an order refusing such motion, so that he cannot maintain prohibition, even though the public interests are so great that he cannot rest on his demurrer and appeal from the judgment thereon, thereby losing his right to plead to the merits. *State ex rel. Thatcher v. District Court*, 38 Nev. 323, 326 (149 P. 178).

An order of the trial court in allowing or dismissing a motion for continuance is not of itself an appealable order, and can be reviewed only on appeal from the final judgment. *Rosenthal v. Rosenthal*, 39 Nev. 74, 76 (153 P. 91).

Const. art. 6, sec. 4, vests the supreme court with appellate jurisdiction in all cases in equity. Rev. Laws, 4832, is to the same effect. Section 4833 empowers the supreme court to review on appeal a judgment in a proceeding commenced in a district court when the matter in dispute is embraced in the general jurisdiction of the supreme court. Section 6162 provides for petition for the appointment of guardian for insane persons. In consideration of the foregoing and this section, it was held that such a proceeding is equitable, and the judgment appointing the guardian for a mentally enfeebled person is final, so that an appeal lies. *O'Donnell v. District Court*, 40 Nev. 428, 433 (165 P. 759).

Under this section, an order refusing to hear a motion for a new trial is appealable. *Saval v. Blume*, 41 Nev. 212, 214 (168 P. 909).

An appeal from the judgment taken more than nineteen months after rendition of judgment will be dismissed under this section. *Nelson v. Smith*, 42 Nev. 302, 309 (176 P. 261, 262).

An order refusing or granting a motion for a new trial is made and entered, within this section, at the time the order is entered in the minutes of the court, and not at the date of filing of a decision upon the merits of the motion. *Id.*

Similar section (Cutting, 3425) cited, *Gamble v. Silver Peak Mines*, 35 Nev. 325.

Both appeals being from the judgment as "entered," appellant is in no position to urge that the time within which an appeal may be taken under this section begins to run from the date of the rendition of judgment, and his motion to dismiss cross-appeal, taken within six months after entry of judgment, will not be considered. *Dixon v. Pruett*, 42 Nev. 345, 349 (177 P. 11).

Where appellant failed to file and serve her notice of appeal within six months after rendition of judgment, as required by this section, a motion for the dismissal of the appeal must be sustained. *Clark v. Turner*, 42 Nev. 450 (180 P. 908).

5330. A failure to serve and file a statement within the time prescribed by Rev. Laws, 5331, does not defeat the appeal, where it was duly perfected under this section by filing a notice of appeal and undertaking, or a waiver thereof. *Glock v. Elges*, 39 Nev. 415, 420 (159 P. 629).

An undertaking not filed within five days after filing notice of appeal, as required by this section and Rev. Laws, 5346, prevents a review of the case, unless such undertaking is actually approved by a majority of the justices of the supreme court before a hearing on a motion by the respondent to dismiss, under Rev. Laws, 5358, providing that no appeal shall be dismissed for insufficiency of the undertaking on appeal if a good and sufficient

undertaking approved by a majority of the justices be filed before a hearing upon motion to dismiss the appeal. *Shute v. Big Meadow Inv. Co.*, 41 Nev. 361-363 (170 P. 1049).

See *Mazade v. Justice Court*, 41 Nev. 481, under section 5325.

5331-9. Repealed, Stats. 1915, 166, and following act (Stats. 1915, 164) substituted:

An Act supplemental to and to amend an act entitled "An act to regulate proceedings in civil cases in this state and to repeal all acts in relation thereto," approved March 17, 1911.

Approved March 16, 1915, 164

Bill of exceptions, how drawn and settled.

SECTION 1. Any party to an action or special proceeding may, after the filing of the complaint, and before trial, object and except to any ruling, decision, or order made in such action or special proceeding, and, within ten (10) days after such objection and exception, serve and file a bill of exceptions thereto, which bill of exceptions shall be settled and allowed by the judge or court, or by stipulation of the parties, by attaching thereto or inserting therein a certificate to the effect that such bill of exceptions is correct, contains the substance of all the material evidence relating to the point or points involved, and has been settled and allowed; and when such bill of exceptions has been so settled and allowed, it shall be and become a part of the record of such action or special proceeding. *As amended, Stats. 1919, 440.*

This act revises the subject-matter of Rev. Laws, 5343, respecting statements on appeal, and substitutes therefor in toto a system of bills of exception, and hence repeals by implication the earlier statute. *Gill v. Goldfield Con. Mines Co.*, 43 Nev. — (176 P. 785-787).

Although Rev. Laws, 5328, and this act relate to the same subject, both being designed to correct errors on appeal, the purpose of the former was to require a motion for a new trial before taking appeal, while the object of the latter was to provide the method of appeal by bills of exception, so that the latter does not repeal the former by conflict in objects. *Id.*

How taken and settled.

SEC. 2. Any party to an action or special proceeding from the time said action or proceeding is called for trial, and until including final judgment has been entered therein, may object and except to any ruling, decision, or order of the court or judge made therein, and, within twenty (20) days after such objection and exception, serve and file a bill of exceptions to such ruling, decision, or action of the court, which bill of exceptions shall be settled and allowed by the judge or court, or by stipulation of the parties, as in the preceding section provided, and when so settled and allowed shall be and become a part of the record of said action or proceeding.

Objections to allowance, how made.

SEC. 3. Any adverse party may object to the allowance and settlement of any bill of exceptions herein provided for within five (5) days after the service of the same, by serving upon the opposite party and filing in said court a statement specifically pointing out wherein said bill does not state the true facts, or wherein the same omits any material fact necessary to explain or make clear any ruling, decision, or action of the court. Such objection shall be heard and determined by the court within five (5) days thereafter, and upon such hearing the court shall designate in what respect said bill is incorrect or untrue, or fails or omits to state the true facts, and shall order and direct that such bill be corrected in accordance with said determination, and engrossed so as to contain the true facts as herein required, and when so engrossed said bill shall be allowed and settled as in

this act provided, and when so settled shall become and be a part of the record of said action. If the objections of the adverse party are disallowed, then such bill as originally filed shall be immediately settled and allowed as by this act required.

Requirements as to bills.

SEC. 4. All bills of exceptions required by the provisions hereof shall be typewritten, paged, and the lines of each page numbered; and where more than one bill of exception is filed in the same action or proceeding each bill shall be consecutively numbered. The service of all bills of exception and objections thereto shall be by copy.

Shorthand report, how certified.

SEC. 5. In all cases where an official reporter is appointed by the court, under authority of law, or by agreement of the parties, a transcription of the shorthand report of the proceedings in any action or special proceeding, when certified by said reporter to be a full, true, and correct transcription of such proceedings, may, at the option of any party, be submitted to the court for allowance and settlement, as the bill of exceptions required under the provisions of this act, and the court or judge shall thereupon attach the certificate as herein provided, whereupon such bill of exceptions shall be and become a part of the record.

Service of bill of exceptions.

SEC. 6. Bills of exception to any action, decision, ruling, or order of the court, after final judgment, shall be prepared, served, allowed, and settled in the manner and within the time specified in section 1 of this act.

Same.

SEC. 7. Bills of exceptions provided for by section 2 of this act may be prepared, served, and filed within twenty (20) days after a motion for a new trial has been determined by the court, and all errors relied upon which may have occurred at the trial, or which may be alleged against the findings, or exceptions to the findings as made, and all errors based upon any ground for a new trial, may be included therein, and all such errors may be reviewed by the supreme court on appeal from the judgment or order denying the motion for a new trial.

How settled.

SEC. 8. When the action, decision, ruling, or order excepted to was made by a referee or any judicial officer other than a judge, the bill of exceptions shall be filed, served, and presented to said referee or judicial officer, and be settled, allowed, and certified by him in the same manner and within the same time as other bills of exception are required to be presented to, settled, and certified by the judge or court. A judge, referee, or judicial officer may settle, allow, and certify to a bill of exceptions after he ceases to be such judge, referee, or judicial officer, and if such judge, referee, or judicial officer, before the bill of exceptions is settled, dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and allow any bill, or if no method is provided by law for the settlement of the same, it shall be settled and certified in such manner as the supreme court may by its order or rules direct.

Rights waived, when.

SEC. 9. If a party shall omit or fail to serve and file his bill of exceptions within the time limited he shall be deemed to have waived his right thereto, and if a party shall omit to make objections as required to such

bill of exceptions within the time limited he shall be deemed to have waived his right thereto.

Extension of time, how.

SEC. 10. The several periods of time specified in this act may be enlarged upon good cause shown by the court, any justice of the supreme court, judge, referee, or judicial official, or by stipulation of the parties. *As amended, Stats. 1919, 55.*

Bill of exceptions annexed to judgment roll.

SEC. 11. The original bills of exceptions herein provided for, together with a notice of appeal and the undertaking on appeal, shall be annexed to a copy of the judgment roll, certified by the clerk or by the parties, if the appeal be from the judgment; if the appeal be from an order, such original bill shall be annexed to such order, and the same shall be and become the record on appeal when filed in the supreme court. A party may appeal upon the judgment roll alone, in which case only such errors can be considered as appear upon the face of the judgment roll.

Last section not to apply, when.

SEC. 12. The provisions of the last preceding section shall not apply to appeals taken from an order made upon affidavits, but certified copy of such affidavits and counter-affidavits, if any, shall be annexed to the order in place of the bill of exceptions mentioned in the last section.

Assignment of errors, time for serving—Form of.

SEC. 13. Within ten (10) days after the transcript of the record on appeal has been filed in the supreme court, the party or parties appealing shall serve upon the adverse parties and file with the clerk of the supreme court an assignment of errors, which assignment shall designate generally each separate error, specifying the lines or folios, and the pages of the record wherein the same may be found. Any error not assigned shall not be considered by the supreme court. If the party fails to file such assignment within the time limited, no error shall be considered by the supreme court. The assignment of errors herein provided for shall be typewritten or printed, paged, and the lines or folios numbered, and the appellant shall furnish three copies thereof for filing in the supreme court. *As amended, Stats. 1919, 55.*

Motion to strike assignment of errors not filed in the time prescribed by this section, and no memorandum of errors being served on respondent pursuant to Rev. Laws, 5322, is well taken. *Gardner v. Pacific Power Co.*, 40 Nev. 343, 344, 347 (163 P. 731).

This section is peremptory and leaves no room for construction, so that, if the assignment be not filed within the time limited, the omission may not be cured by a subsequent filing, in the absence of fraud, bad faith, or deception on the part of respondent. *Coffin v. Coffin*, 40 Nev. 345, 347 (163 P. 731).

This section does not deprive an appellant of his constitutional right of appeal, since while the constitution gives the right of appeal, and the legislature, under the pretense of prescribing forms, cannot deprive parties of substantial rights, the constitutional right of appeal is to be enjoyed and exercised subject to the regulations of law and practices of the court. *Id.*

An assignment of errors is founded on the bill of exceptions. *Id.*

Where demurrer to complaint for libel was sustained, all the matters pertaining to the proceedings in the trial court so far as affecting the plaintiff's rights are embraced in the "judgment roll" within Rev. Laws, 5273, subd. 2, stating what constitutes a judgment roll, so that under this act, permitting an appeal on the judgment roll alone, it was unnecessary to file assignments of error as required by this section. *Talbot v. Mack*, 41 Nev. 245, 252-255 (169 P. 25).

Original exhibits sent, when.

SEC. 14. Where it is not practicable to embody an exhibit in the bill of exceptions, then the original exhibit, certified to by the clerk or by the parties, may be sent to the supreme court, together with the record as hereinabove specified, and such original exhibits shall be and become a part of the record upon appeal in said court.

Certain sections repealed.

SEC. 15. Sections 389, 390, 391, 392, 393, 394, 395, 396, and 397 of the above-entitled act, and all provisions of law in conflict herewith, are hereby repealed; but nothing contained herein shall affect or invalidate any proceedings already had in any action or special proceeding now pending, but said action or proceeding may be finally heard and determined upon the record made under the existing law.

5331. Though the provisions of Cutting's Compilation, sec. 3292, were not carried forward into the Revised Laws, yet where the parties stipulated for an extension of time beyond the ten days specified in Rev. Laws, 5323, such stipulation was a waiver of plaintiff's right to object that the motion was not in time. *Torp v. Clemons*, 37 Nev. 474, 477 (142 P. 1115).

Under this section, any defect in the notice is waived by serving and filing a notice of appeal. *Glock v. Elges*, 39 Nev. 415, 420 (159 P. 629).

See citation of this same case under section 5330.

A statement not served and filed within the time prescribed by this section cannot be considered on appeal. *Id.*

See *Ward v. Pittsburg G. M. Co.*, 39 Nev. 80, under section 5320.

Cited, *Daly v. Lahontan Mines Co.*, 39 Nev. 20 (151 P. 514; 158 P. 285).

5332. Cited, *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 100, 101 (148 P. 345; 153 P. 434).

5333. In view of this section, where the only relief granted appellant was on the appeal from the judgment based on the judgment roll alone, appellant is not entitled to costs for the transcript on appeal from the order denying his motion for a new trial. *Ramelli v. Sorgi*, 40 Nev. 281, 283 (161 P. 717).

5334. If a trial judge, having had a statement or bill of exceptions presented to him refuses to settle the same, the aggrieved party may proceed in the supreme court under this section. *Miller v. Miller*, 36 Nev. 115, 119, 128 (134 P. 100; 136 P. 978).

Cited, *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 99 (148 P. 345; 153 P. 434).

5335. See *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 80, under section 5320.

5338. Similar section (Cutting, 3862) cited, *State v. Hill*, 32 Nev. 187 (105 P. 1025).

Cited, *Botsford v. Van Riper*, 32 Nev. 223 (106 P. 440).

By the direct provision of this section, a party may appeal on the judgment roll alone. *Daly v. Lahontan Mines Co.*, 39 Nev. 14, 20 (151 P. 514; 158 P. 285).

Cited, *Shute v. Big Meadow Inv. Co.*, 41 Nev. 363 (170 P. 1049).

5339. See *Rosenthal v. Rosenthal*, 39 Nev. 74, under section 5356.

5340. Under this section, the court on appeal from a judgment will review the court's ruling on motion to strike certain affirmative matter pleaded in answer. *Potter v. L. A. & S. L. R. R. Co.*, 42 Nev. 370, 373 (177 P. 933).

5343. See *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 80, under section 5320.

Stats. 1915, 164, revises subject-matter of this section, respecting statements on appeal, and substitutes therefor in toto a system of bills of exception, and hence repeals by implication the earlier statute. *Gill v. Goldfield Con. Mines Co.*, 43 Nev. — (176 P. 784-786).

5345. Judgment not reversed for want or insufficiency of finding, unless exception made.

SEC. 403. In cases tried by the court, without a jury, no judgment shall be reversed for want of a finding, or for a defective finding of the facts, unless exceptions be made in the court below to the finding or to the want

of a finding after application to the court for additions to or modification of the findings with notice given to the adverse party as prescribed in section 285 of this act. Upon failure of the court on such application to remedy the alleged error, the party moving shall be entitled to his exceptions. *As amended, Stats. 1919, §19.*

Similar section (Cutting, 3858) cited, *Western Engineering Company v. Nevada Amusement Company*, 33 Nev. 206 (110 P. 1129); also, *Moore v. Rochester Weaver M. Co.*, 42 Nev. 183 (174 P. 1017).

Cited, *Pincolini v. Steamboat Canal Co.*, 41 Nev. 46 (167 P. 1314).

Cited, *Moore v. Rochester Weaver M. Co.*, 42 Nev. 182 (174 P. 1023).

5346. Similar section (Cutting, 3436) cited, *Silver Peak Mines v. District Court*, 33 Nev. 115 (110 P. 503; 29 Ann. Cas. 587).

As procedure under Rev. Laws, 6162, is not a case provided for in this section and Rev. Laws, 5347, 5350, and 5351, the perfection of an appeal by giving the undertaking as prescribed by this section stays proceedings in the court below and order appealed from, under the specific provision of Rev. Laws, 5355. *O'Donnell v. District Court*, 40 Nev. 428, 434 (165 P. 759).

See *Shute v. Big Meadow Inv. Co.*, 41 Nev. 361, under section 5330.

A bond on appeal from an order dismissing writ of certiorari to review judgment of justice's court, which was never filed in the district court as required by this section nor approved by the justices of the supreme court under Rev. Laws, 5358, conferred no jurisdiction of the appeal. *Mazade v. Justice Court*, 41 Nev. 481, 484 (172 P. 378).

5347. Appeal not to stay execution unless bond filed.

SEC. 405. If the appeal be from a judgment or order directing the payment of money, or from an order dissolving or refusing to dissolve an attachment, it shall not stay the execution of the judgment or order unless a written undertaking be executed on the part of the appellant, by two or more sufficient sureties, stating their place of residence and occupation, to the effect that they are bound in double the amount named in the judgment or order, or double the sum of the value of the property attached, as the case may be; that if the judgment or order appealed from, or any part thereof, be affirmed, or such appeal be dismissed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal, and that if the appellant does not make such payment within thirty days after the filing of the remittitur from the supreme court, in the court in which the appeal is taken, judgment may be entered on motion of the respondent, in his favor against the sureties for such amount, together with the interest that may be due thereon and the damages and costs which may be awarded against the appellant upon the appeal. When the judgment or order appealed from is made payable in a specified kind of money or currency, the undertaking required by this section shall be drawn and made payable in the same kind of money or currency specified in said judgment or order, and in case of any appeal from an order dissolving or refusing to dissolve an attachment, such undertaking shall be conditioned that if the order appealed from or any part thereof be affirmed, the appellant shall pay to the opposing party, on such appeal, all damages and costs caused by him by reason of said appeal and the stay of execution thereon. *As amended, Stats. 1915, §19.*

See *O'Donnell v. District Court*, 40 Nev. 429, under section 5346.

Cited, *Green v. Hooper*, 41 Nev. 18, 19 (167 P. 23).

5349. Bond on appeal when order directs delivery of certain property or documents.

SEC. 407. If the judgment or order appealed from direct the assignment

or delivery of documents, or personal property, the execution of the judgment or order shall not be stayed by or upon appeal, unless the things required to be assigned or delivered be assigned and placed in the custody of such officer or receiver as the court may appoint, and an undertaking be entered into on the part of the appellant, with at least two sureties, to be approved by the court or judge and in such amount as the court or judge thereof may direct, to the effect that the appellant will, if the judgment or order appealed from, or any part thereof, be affirmed, pay to the opposing party on such appeal all damages and costs caused by him by reason of such appeal and the stay of execution thereof. In lieu of the assignment and delivery, and of the undertaking hereinbefore provided for, the appellant may enter into an undertaking, with at least two sureties, to be approved by the court or judge, and in such amount as the court or judge thereof may direct, to the effect that if the judgment or order, or any part thereof, be affirmed, the appellant will obey the order of the appellate court upon the appeal and pay to the opposing party on such appeal all damages and costs caused by reason of said appeal and the stay of execution thereon.

Not to affect previous act.

SEC. 5. Nothing in this act contained shall be construed to repeal, limit or affect in any way the provisions of an act entitled "An act pertaining to the form of denials in pleadings in civil actions in the State of Nevada," approved February 28, 1913. *As amended, Stats. 1913, 301.*

5350. See *O'Donnell v. District Court*, 40 Nev. 429, under section 5346.

5351. On appeal from a mandatory injunction requiring defendant to release water from its reservoir and permit it to flow down the stream so that plaintiff can use it, defendant was entitled, as a matter of right, to a stay of proceedings upon the injunction upon the filing of a proper stay bond. *State ex rel. Pacific Reclamation Co. v. Ducker*, 35 Nev. 214, 228 (127 P. 990).

See *O'Donnell v. District Court*, 40 Nev. 429, under section 5346.

5354. While *Cutting*, 3443 (similar to this), providing that the adverse party may except to the sufficiency of the sureties in an undertaking on appeal, does not require such party to serve notice of his exception upon the appellant, the appellant is entitled to such notice, in view of district court rule 10, providing that motions, except *ex parte* motions, shall be noticed at least five days before the day specified for a hearing. *Konig v. Nevada-California-Oregon Railway*, 36 Nev. 181, 197 (135 P. 141).

Held, that an instrument excepting to the sufficiency of the surety on an undertaking on appeal, and asking that such surety appear before the judge and justify as required by such section, although probably sufficient where personal sureties are given, was not a sufficient exception where the undertaking was executed by a surety company. *Id.*

5355. See *O'Donnell v. District Court*, 40 Nev. 429, under section 5346.

5356. Rev. Laws, 5339, providing that, upon an appeal from an order made on affidavit, a certified copy of the affidavit and counter affidavit shall be annexed to the order in place of the statement on appeal, and this section, apply to appealable orders only and do not give an appeal from orders not otherwise appealable. *Rosenthal v. Rosenthal*, 39 Nev. 74, 77 (153 P. 91).

See *Raine v. Ennor*, 39 Nev. 365, under section 4922.

5357. Held under this section, construed with other statutes, that a widow cannot have set apart for her as a homestead land which was her husband's separate property at his death, and had not been declared on as a homestead; there being other heirs. In *Re Cook's Estate*, 34 Nev. 217, 233-238 (117 P. 27).

5358. See *Shute v. Big Meadow Inv. Co.*, 41 Nev. 361, under section 5330.

See *Mazade v. Justice Court*, 41 Nev. 481, under section 5346.

Within this section, where there was no bill of exceptions or statement on appeal, but only a memorandum of exceptions for use on a motion for a new trial, the matter was one

of jurisdiction. *Ward v. Pittsburg Silver Peak G. M. Co.*, 39 Nev. 80, 101 (148 P. 345; 153 P. 434).

Notwithstanding this section, where appellant fails to comply, at least substantially, with the provisions of the statute, the court can do nothing but dismiss the appeal, as the right of appeal is regulated by the statute. *Id.*

5362. The fees of the clerk of the supreme court prescribed by Cutting, 2469 (Rev. Laws, 2006), allowing a fee for entering any motion, rule, or order, and a fee for filing each paper, are limited to orders and motions defined by Cutting, 3586 (same as this section), providing that every direction of the court made or entered in writing and not included in the judgment is an order, and an application for an order is a motion, and an offer of or objection to evidence, or a ruling admitting or rejecting evidence, or the routine adjournment of the trial, is not a motion and order, and the clerk may not recover fees therefor. *State ex rel. Springmeyer v. Baker*, 35 Nev. 301, 311, 312 (126 P. 345; 129 P. 452).

Cited, *Lind v. Webber*, 36 Nev. 641 (134 P. 461; 135 P. 139; 141 P. 458; 50 L. R. A. (N.S.) 1046).

5367. This section and district court rule 10, relating to service of notice, and rule 45, providing that motions to vacate orders may be made within six months on notice of the adverse party, are applicable to chancery proceedings. *State ex rel. Sparks v. Wildes*, 37 Nev. 57, 81 (139 P. 505; 142 P. 627).

5367-5370. With no law authorizing notice by publication and these sections providing only for service of notice by personal delivery, etc., publication of notice of motion to fix compensation of the receiver of the State Bank and Trust Company did not cut off rights of the state or depositors or parties in interest from a hearing or assertion of their rights, or from proceeding to vacate the orders, by showing the allowance or claim to be excessive. *State ex rel. Sparks v. Wildes*, 37 Nev. 56, 65 (139 P. 505; 142 P. 627).

5369. Where plaintiff's bill of costs was filed, but no copy thereof was filed in the county clerk's office, there was no service on defendant's attorneys under this section, even if this section applies, since under Rev. Laws, 5387, requiring the party claiming costs to deliver a memorandum of the items of his costs to the clerk and serve a copy on the adverse party, the paper required to be served was a copy of the cost bill. *Radovich v. Western Union Telegraph Co.*, 36 Nev. 341, 346 (135 P. 920; 136 P. 704).

5373. Cited, *Radovich v. Western Union Telegraph Co.*, 36 Nev. 346 (135 P. 920; 136 P. 704).

5375. Under Rev. Laws, 5387, and this section, service of a cost bill should be made upon the attorneys for the adverse party, since their authority is not terminated so long as the amount of costs remains open to settlement, and service of the cost bill upon the resident agent of a foreign corporation was irregular, if not void, since under Rev. Laws, 5024, requiring foreign corporations to keep in the state an agent upon whom all legal process may be served, only papers in the nature of process may be served upon the resident agent, and under Rev. Laws, 5475, providing that, unless otherwise apparent from the context, the word "process" means a writ or summons issued in the course of judicial proceedings, the cost bill is not a process. *Radovich v. Western Union Telegraph Co.*, 36 Nev. 341, 345, 346 (135 P. 920; 136 P. 704).

5376. See *State ex rel. Springmeyer v. Baker*, 35 Nev. 301, under section 5362.

5377. Where a case comes to the district court on appeal from justice's court costs in the district court do not follow as a course, but come under the provisions of Rev. Laws, 5390, whereby the district court is authorized and directed to exercise its discretion in cases other than those mentioned in this section, prescribing allowance of costs as of course. *McLeod v. District Court*, 39 Nev. 337, 345 (157 P. 649).

This section applies to recovery of damages for forcible entry, where plaintiff's title or right of possession was disputed. *Glock v. Elges*, 39 Nev. 415, 420 (159 P. 629).

See *McLeod v. District Court*, 39 Nev. 337, under section 5377.

5380. See *State ex rel. Springmeyer v. Baker*, 35 Nev. 301, under section 5362.

5381. Under this section, where, in opinion on rehearing, the supreme court made no

order as to costs, since defendant appellant had obtained relief originally by reduction of judgment against it, judgment having been reversed unless plaintiff agreed to reduction, appellant should recover his costs on the original appeal. *Dixon v. Southern Pacific Co.*, 42 Nev. 74, 91 (179 P. 382, 383).

Where both parties petition for rehearing, and neither party obtain any relief, as a consequence each party, under this section, should pay his own costs incurred on the rehearing. *Id.*

Under the provisions of this section, where the supreme court in reversing a judgment makes no order as to costs, the costs shall be allowed to the party obtaining relief, and where a judgment for plaintiff for \$300 was reversed, it follows as a matter of course that costs are recoverable by appellant without an order therefor. *Richards v. Vermilyea*, 42 Nev. 294, 300 (175 P. 188; 180 P. 121).

5387. Filing and service of verified cost bill—Retaxing.

SEC. 445. The party in whose favor judgment is rendered, and who claims his costs, must deliver to the clerk, and serve a copy upon the adverse party, within five days after the verdict or notice of the decision of the court or referee, or such further time as the court or judge may grant, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party, or his attorney or agent, or by the clerk of his attorney, stating that to the best of his knowledge and belief the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. He shall be entitled to recover the witness fees, although at the time he may not actually have paid them. Issuance or service of subpoena shall not be necessary to entitle a prevailing party to tax, as costs, witness fees and mileage, provided that such witnesses be sworn and testify in the cause. It shall not be necessary to embody in the memorandum the fees of the clerk, but the clerk shall add the same according to his fees fixed by statute. Within three days after service of a copy of the memorandum, the adverse party may move the court, upon two days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge in chambers shall settle the costs. *As amended, Stats. 1919, 56.*

See *Radovich v. Western Union Telegraph Co.*, 36 Nev. 341, under section 5375.

Cited, *Lind v. Webber*, 36 Nev. 640 (134 P. 461; 135 P. 139; 141 P. 458; 50 L. R. A. (N.S.) 1046).

Cited, *McLeod v. District Court*, 39 Nev. 345 (157 P. 649).

Under this section, requiring the clerk to tax his fees, such fees should be taxed in favor of a prevailing plaintiff, although the bill of costs was properly stricken. *Glock v. Elges*, 39 Nev. 415-422 (159 P. 629).

5396. Contempt, when punishable summarily, when not—Jury trial.

SEC. 454. When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily, for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators; *provided*, that in all cases of contempt arising without the immediate view and presence of the court the person charged with contempt may demand and have a jury trial; *and provided further*, that in all cases of contempt arising without the immediate view and presence of the court, the judge of such court in

whose contempt the defendant is alleged to be shall not preside at such trial over the objection of the defendant. *As amended, Stats. 1913, 117.*

5403. Penalty for contempt—Maximum.

SEC. 461. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged; and if it be found that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding twenty-five (25) days, or both, but no imprisonment shall exceed twenty-five (25) days except as provided in the next section. *As amended, Stats. 1913, 117.*

5409. This section affects the admissibility of the specified character of evidence, but not the method of the production thereof in court, and the supreme court in quo warranto involving an election contest has no authority to direct the county clerk of the county to certify to the court the ballots and election returns of the precinct of the county for the election. *State ex rel. Springmeyer v. Baker and Josepha*, 35 Nev. 1, 4, 7, 13, 15 (126 P. 345; 129 P. 452).

5419-5449. Cited, *Roberson v. Kilborn*, 40 Nev. 426 (165 P. 220).

5419. In a suit to declare and enforce a resulting trust as to corporate stock alleged to be held by defendant as trustee for plaintiff's testator, defendant was precluded by this section from testifying as to any transaction between himself and testator. *Torp v. Clemmons*, 37 Nev. 474, 483 (142 P. 1115).

This section does not disqualify the witness to testify as to matters brought out by opposing witnesses outside the transaction and out of the presence and hearing of the person who had since died. *Id.*

One who was jointly indicted with accused for murder and on previous separate trial had been convicted was a competent witness for the state in a murder trial under this section, defining witnesses, and Rev. Laws, 7451, applying this section to criminal actions. *State v. Tranmer*, 39 Nev. 143, 154, 155 (154 P. 80).

Under this section, when the facts to be proven transpired before the death of such deceased person, testimony of the mother of plaintiff who was adopted by the testatrix and her husband, in a suit against the testatrix's executor to enforce specific performance of alleged contracts by which plaintiff was to inherit any property of which testatrix and her husband might die possessed, it appearing that testatrix's husband conveyed all his property to her, as to matters relative to the alleged agreement transpiring before the death of the testatrix, all of which tended to establish the alleged contract of adoption, is inadmissible. *Forsyth v. Heward*, 41 Nev. 305, 309 (170 P. 21).

In such case testimony by plaintiff's own father concerning acts and conduct of testatrix and her husband when they went to his house to get plaintiff is also inadmissible under this section; for it would be a mere evasion to allow testimony as to acts when testimony as to transactions with deceased persons is inadmissible. *Id.*

Under this section, one party to an arrangement with a corporation cannot testify thereto after death of corporate representative, for such representative was the other party to the transaction. *Bright v. Virginia and Gold Hill Water Co.*, 254 F. 175, 179.

Similar section (Stats. 1861, 340; Comp. L. 1873, sec. 1440) cited, *Bright v. Virginia and Gold Hill Water Co.*, 254 F. 177.

5420. Similar section (sec. 1441, Comp. L. 1873) cited, *State v. Tranmer*, 39 Nev. 154, 155 (154 P. 80).

5421. Where plaintiff in giving his deposition refused under advice and command of his counsel to answer certain questions until the court had ruled that they should and must be answered, his refusal was not contumacious, nor was he a recalcitrant witness, and it was error, before ruling that the questions must be answered, to strike his complaint. *Roberson v. Kilborn*, 40 Nev. 423, 426 (165 P. 220).

Conceding questions propounded in taking a deposition were legal and pertinent, it was

an arbitrary exercise of authority to enter judgment against defendant before giving him an opportunity to answer the questions propounded and ruled to be proper. *Id.*

5424. Under this section, a wife was competent to testify against her husband in his action for criminal conversation, where the husband and wife had each consented in open court that the other might testify to anything existing between them having a bearing on the case. *Rehling v. Brainard*, 38 Nev. 16, 22 (144 P. 167; Ann. Cas. 1917C, 656).

5431. Under this section, the mileage of witnesses residing in another county more than thirty miles from the place of trial cannot be taxed as costs. *Zelavin v. Tonopah Belmont D. Co.*, 39 Nev. 2, 11 (149 P. 188).

5437. Cited, *State v. Scott*, 37 Nev. 447 (142 P. 1053).

5438. See *Roberson v. Kilborn*, 40 Nev. 423, under section 5421.

5445. Where a nonresident brought habeas corpus within the state against his wife for the possession of their minor child, he was not immune, while in the state for such purpose, from service of summons in a divorce suit; this section not protecting him from being served with a summons or applying to him while voluntarily in this state maintaining his own suit. *Tiedemann v. Tiedemann*, 35 Nev. 259, 262 (129 P. 313).

5456. Where testimony legally objectionable in substance was elicited from the plaintiff on cross-examination by his attorneys in his deposition taken by defendants, and the deposition was read in evidence as provided for by Comp. L. 3504, similar to this, thereby making the deposition plaintiff's own evidence under the provision to that effect of Comp. L. 3505, an objection made by defendants on the trial to the admission of such objectionable testimony should have been sustained, though the deposition was taken on defendants' motion, since, under a further provision of Comp. L. 3504, the evidence taken in a deposition is subject to all legal exceptions. *McLeod v. Miller & Lux*, 40 Nev. 448, 483 (153 P. 566; 167 P. 27).

The objection to such substantially inadmissible evidence was properly made at the trial instead of at the taking of the deposition, under the provision of Comp. L. 3504, that depositions may be used upon the trial subject to all legal exceptions. *Id.*

5457. See *McLeod v. Miller & Lux*, 40 Nev. 448, under section 5456.

5474. Cited, *Ex Parte Tranmer*, 35 Nev. 67 (126 P. 337; 41 L. R. A. (N.S.) 1095).

5475. A cost bill cannot be regarded as a process, as that term is used in the statute. "Process" means a writ or summons issued in the course of judicial proceedings; the cost bill is not a process. *Radovich v. Western Union Telegraph Co.*, 36 Nev. 341, 346 (135 P. 920; 136 P. 704).

5476. Cited, *Radovich v. Western Union Telegraph Co.*, 36 Nev. 341, 346 (135 P. 920; 136 P. 704).

An affidavit for a primary election contest before a judge of a district court, praying that all ballots cast in the precincts objected to for the particular office might be recounted and for such further relief as to the court might seem meet and proper, was sufficient. *Brown v. Dunn*, 35 Nev. 167, 176 (127 P. 81).

An Act relating to the time of performance of certain acts provided to be done either by law or contract when the day of performance falls upon a holiday or a nonjudicial day.

Approved March 10, 1913, 49

Secular acts, when executed.

SECTION 1. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday or a nonjudicial day, it may be performed upon the next business day with the same effect as if it had been performed upon the day appointed; and if such act is to be performed at a particular hour it may be performed at the same hour of the next business day.

This act does not permit a nominee at a primary election to be held September 1 to file his papers on August 3 though August 2 falls on Sunday; section 7 of subchapter 3 of election law of 1913 (Stata. 1913, 493, c. 284) providing that such papers shall be filed at least thirty days prior to the primary election. *State ex rel. Thatcher v. Brodigan*, 37 Nev. 458, 462 (142 P. 520).

5501. Under Const. art. 6, sec. 14, Rev. Laws, 4943, this section, and Rev. Laws, 5518 and 5603, a defendant in an action under Rev. Laws, 5588, for unlawful detainer may show the nonexistence of the relation of landlord and tenant essential to the maintenance of the action, and may show that an instrument in form a lease was a part of another instrument, and that the two constituted a mortgage, and thereby defeat the action. *Yori v. Phenix*, 38 Nev. 277, 282, 283 (149 P. 180).

Under this section, where plaintiff, by executory contract, agreed to sell land, retaining title and reserving the right to maintain a suit for the foreclosure of the agreement and any equity of redemption of the purchasers, although, pursuant to the contract, the purchasers went into possession, plaintiff could recover in a personal action for the unpaid balance of the purchase price, not being restricted to an action for foreclosure, as it was not a mortgagee, because a mortgagor holds legal title, and a mortgagee only an equitable lien. *Southern Pacific Co. v. Miller*, 39 Nev. 169, 173-175 (154 P. 929).

5508. This section, providing that in forcible-entry cases, judgments "may" be entered for treble the actual damages, permits, but does not require, such penalty to be imposed. *Glock v. Elges*, 39 Nev. 415, 416, 422 (159 P. 629).

The supreme court will not modify a judgment to allow treble damages in a forcible-entry case under this section, where the facts are not before it. *Id.*

5514. Neither under this section, nor independently of it, does a complaint state a cause of action to quiet title if not alleging that defendants claim an interest in the property adverse to plaintiffs. *Clay v. Scheeline Banking and Trust Co.*, 40 Nev. 9, 16 (159 P. 1081).

5518. Cited, *Douglass v. Thompson*, 35 Nev. 207 (127 P. 561; Ann Cas. 1914C, 920). See *Yori v. Phenix*, 38 Nev. 277, under section 5501.

Under Cutting, 3357, similar to this, where an absolute conveyance of real property was in fact a mortgage, the grantee was entitled to the rents and profits so long as the mortgagors remained in possession; and hence, on their becoming bankrupts, such rents and profits passed to their trustee. *Alter v. Clark*, 193 F. 153, 157.

An Act to quiet title to real estate by defining when the lien of an attachment and mortgage and the notice of the pendency of an action expires.

Approved March 2, 1917, 41

Attachment liens expire, when.

SECTION 1. The lien upon real property heretofore or hereafter created by the levy of a writ of attachment shall, unless otherwise released and discharged of record, at the expiration of ten years from the time of such levy terminate and be conclusively presumed to have been regularly released and discharged.

Mortgage liens expire, when.

SEC. 2. The lien heretofore or hereafter created of any mortgage upon any real estate, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of ten years after the debt secured by said mortgage according to the terms thereof become wholly due, terminate, and it shall be conclusively presumed that said debt has been regularly satisfied and said lien discharged.

Imputation of notice ceases, when.

SEC. 3. Notice of the pendency of any action shall not constitute notice or be of any force or effect after the expiration of ten years from the time of the filing of such notice.

5588. Unlawful detainer defined.

SEC. 646. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

1. Where he continues in possession, in person or by subtenant, of the property or any part thereof, after the expiration of the term for which it is let to him. In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy shall be terminated without notice at the expiration of such specified term or period; or

2. When, having leased real property for an indefinite time, with monthly or other periodic rent reserved, he continues in possession thereof, in person or by subtenant, after the end of any such month or period, in cases where the landlord, fifteen days or more prior to the end of such month or period, shall have served notice requiring him to quit the premises at the expiration of such month or period; or, in cases of tenancy at will where he remains in possession of such premises after the expiration of a notice of not less than five days.

3. When he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, shall have remained uncomplied with for the period of three days after service thereof. Such notice may be served at any time after the rent becomes due.

4. When he assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste thereon, or when he sets up or carries on therein or thereon any unlawful business, or when he suffers, permits, or maintains on or about said premises any nuisance, and remains in possession after service upon him of three days' notice to quit.

5. When he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those hereinbefore mentioned, and after notice, in writing, requiring in the alternative the performance of such condition or covenant, or the surrender of the property, served upon him, and, if there be a subtenant in actual occupation of the premises, also upon such subtenant, shall remain uncomplied with for five days after the service thereof. Within three days after the service, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person, interested in its continuance, may perform such condition or covenant and thereby save the lease from forfeiture; *provided*, that if the covenants and conditions of the lease, violated by the lessee, cannot afterwards be performed, then no notice as last prescribed herein need be given. *As amended, Stats. 1917, 31.*

See *Yori v. Phenix*, 38 Nev. 277, under section 5501.

5599. This section does not clearly authorize the trebling of the amount of rent found due, as the statute mentions other elements of damage, such as waste, and while the legislature has used language to indicate that in some way treble damages are to be recovered from tenants holding over, the statute having failed to show what damages shall be trebled, as penalties and forfeitures will not be extended by implication and doubtful construction, no such judgment can be rendered against a tenant holding over. *Regan v. King*, 39 Nev. 217, 221, 223 (156 P. 688).

5603. See *Yori v. Phenix*, 38 Nev. 277, under section 5501.

5606-5629. In condemnation proceedings to assess the damages for a right of way taken by a power company, the complaint and answer contained names of commissioners to assess compensation and damages as provided in Stats. 1907, 279. These sections, enacted after institution of the proceedings, provided in Rev. Laws, 5624, that the provisions of the

Revised Laws relative to civil actions should constitute the rules of practice in proceedings under said chapter. Rev. Laws, 5199, provided that an issue of facts should be tried by a jury, unless a trial jury was waived, and Rev. Laws, 5818, provided that the repeal of a law by the act should not affect any action or proceeding commenced in a civil case before the repeal took effect, but the proceedings in such case shall, as far as practicable, conform to the provisions of the Revised Laws. Held, that the action of the trial court in calling a jury was justified; since the general rule against the retrospective construction of a statute does not apply to statute relating only to remedies. *Truckee River G. E. Co. v. Durham*, 38 Nev. 311, 312, 315, 317 (149 P. 61).

Where condemnation proceedings were instituted when Stats. 1907, 279, regulated the subject, and provided that compensation and damages should be assessed by commissioners, the assessment of damages in such proceedings by a jury was permissible after the enactment of these sections, which regulated the subject of eminent domain, and expressly repealed the former act; since the general rule that a special statute enacted for a special purpose, when complete in itself, is not repealed, modified, or amended by a subsequent general statute, has no application where the later general statute expressly repeals the former act. *Id.*

5606. Rev. Laws, 2456, provides that mining for gold, silver, etc., is the paramount interest of the state and is hereby declared to be of public use. Rev. Laws, 2458, authorizes any citizen to enter upon private unfenced and unimproved land and prospect thereon for precious metals. This section provides that the right of eminent domain shall be exercised for the public uses therein specified, etc. Held, that the use of land as a place upon which to deposit tailings from an ore mill is a public use, and land may be condemned therefor. *Goldfield Con. M. & T. Co. v. Old Sandstorm Co.*, 38 Nev. 427, 436, 442 (150 P. 313).

5607. Under this section it was held that only such interest in land desired as a place for deposit of tailings as is necessary can be taken, as the statute does not say that a fee simple shall be taken, but only that it is subject to be taken. *Goldfield Con. M. & T. Co. v. Old Sandstorm Co.*, 38 Nev. 428, 447 (150 P. 313).

5613. Persons claiming interest in land sought to be condemned, and for that reason claiming an interest in the award made, were expressly authorized to intervene by Stats. 1907, 279, sec. 8 (similar to this). *Las Vegas and Tonopah R. R. Co. v. Summerfield*, 35 Nev. 229, 234, 236 (129 P. 303).

5614. Cited, *Goldfield Con. M. & T. Co. v. Old Sandstorm Co.*, 38 Nev. 434 (150 P. 313).

5616. Under this section, where there was a leasehold interest in defendant's ranch, a right of way over which plaintiff was seeking to condemn, it was unnecessary for the jury to assess such interest where the plaintiff had purchased the interest from the lessee. *Truckee River G. E. Co. v. Durham*, 38 Nev. 312, 318 (149 P. 61).

5624. See *Truckee River G. E. Co. v. Durham*, 38 Nev. 311, under sections 5606-5629.

5647. Under Cutting, 3983, similar to this, and Cutting, 3984, similar to Rev. Laws, 5648, it was held that, while the jury has discretion to grant exemplary damages, it should be permitted to award them only when the injury is proved to have occurred under circumstances indicating fraud, malice, oppression, intentional wrong, wantonness, or a degree of recklessness amounting to indifference to the rights and welfare of others. *Benner v. Truckee River G. E. Co.*, 193 F. 740; 211 F. 81.

In an action against a corporation for decedent's wrongful death caused by the negligence of the manager in charge, plaintiff could not recover exemplary damages authorized in certain cases by Cutting, 3984 (similar to Rev. Laws, 5648), by merely proving that defendant was not notified of a sagging wire, and that its agent promised to repair the same, in the absence of proof that defendant company in any way participated in the negligence of its agent, or of bad faith, evil intent, or intentional wrong or that defendant knowingly employed an unfit and incompetent servant. *Id.*

5648. See *Benner v. Truckee River G. E. Co.*, 193 F. 740, under section 5647.

5649-5652. Cited, *Lawson v. Halifax-Tonopah M. Co.*, 36 Nev. 609 (135 P. 611; 138 P. 261; aff. 239 U. S. 632).

5649. Under similar section (Stats. 1905, 249), it was held: Where the plaintiff, in an action to recover damages for the wrongful expulsion from a train, who was a nonresident and had no other property in the state, died while the action was pending, his right of action was property upon which letters of administration might issue in the county in which the case was pending, even though the action might also have been instituted in the state of his residence. *Forrester v. Southern Pacific Company*, 36 Nev. 247, 265, 271 (134 P. 753; 48 L. R. A. (N.S.) 1).

By the enactment of similar section (Stats. 1907, 437) the common-law rule of fellow-servants was modified, and, moreover, the common-law rule of contributory negligence was superseded by the statutory rule, which is more or less properly termed a rule of "relative" or "comparative" negligence. *Lawson v. Halifax-Tonopah M. Co.*, 36 Nev. 596, 609 (135 P. 611; 138 P. 261; aff. 239 U. S. 632).

By statutory enactment in this state, the common-law rule of fellow-servant has been modified, and the common-law rule of contributory negligence has been superseded by statutory rule, which is more or less properly termed the rule of "relative" or "comparative" negligence. *Peterson v. Pittsburg Silver Peak G. M. Co.*, 37 Nev. 123 (140 P. 519).

Statute similar to this section (Stats. 1907, 437) cited, *Knock v. Tonopah and Goldfield R. R. Co.*, 38 Nev. 146 (145 P. 939; L. R. A. 1915F, 3).

5651. This section substitutes for the common-law rule of contributory negligence the rule of relative or comparative negligence. *Peterson v. Pittsburg Silver Peak G. M. Co.*, 37 Nev. 118, 123 (140 P. 519).

5652. Under this section, a release of an employer from liability for personal injuries, damaging an employee in the sum of about \$1,200, in consideration of the payment of \$36, did not prevent a recovery of such damages, since the statute invalidates defenses based, not only on contracts made to cover future injuries, but defenses based upon acceptance of insurance, relief benefit, or indemnity by a person already injured, and the word "indemnity" means protection or exemption from loss or damage, passed or to come, or immunity from punishment for past offenses. *Lawson v. Halifax-Tonopah M. Co.*, 36 Nev. 595-598, 601, 609 (135 P. 611; 138 P. 261; aff. 239 U. S. 632).

This section is not unconstitutional, since the legislature has power to enact laws to promote healthful conditions of work or freedom from undue oppression; and a contract which this state, in the legitimate exercise of its police power, has the right to prohibit is not within the protection of Const. U. S. Amend. 14, especially in view of the further provision of that section that upon the trial of an action the defendant may set off the sum it has contributed toward any such insurance, relief benefit or indemnity that may have been paid to the person entitled thereto. *Id.*

Under Workman's Compensation Act (Stats. 1911, 362), sec. 11, allowing workman to elect any other remedy at law, where a servant, a citizen and resident of California, executed in California a full and fair release of his master from liability for injuries received in his employment in Nevada, which was valid in California, it was a valid defense to action by him in Nevada for such injuries, notwithstanding this section, for, the cause of action being transitory, and being completely barred in California, it was completely extinguished everywhere. *Leach v. Mason Valley Mines Co.*, 40 Nev. 143, 149 (161 P. 513).

5653. Cited, *State ex rel. Mighels v. Eggers*, 36 Nev. 366, 367, 382 (136 P. 104).

Mandamus will not issue to compel the state controller to draw a warrant in payment of an unliquidated demand against the state approved by the board of examiners, as an adequate remedy exists under the provisions of this section. *State ex rel. Abel v. Eggers*, 36 Nev. 373, 382 (136 P. 100).

5655. Cited, *State ex rel. Mighels v. Eggers*, 36 Nev. 366, 367 (136 P. 104).

Cited, *State ex rel. Abel v. Eggers*, 36 Nev. 382 (136 P. 100).

5656. Quo warranto proceeding by the state, on the relation of a city against a foreign corporation, for failure to comply with its franchise, instituted by the attorney-general under this section and Rev. Laws, 5657, 5658, 5659, 5663, as to quo warranto, held to be an action by the state, and not the city, preventing removal for diversity of citizenship; the

state not being a citizen. *State ex rel. Reno v. Reno Traction Co.*, 41 Nev. 405, 408 (171 P. 375; L. R. A. 1918D, 847).

5657. See *State ex rel. Reno v. Reno Traction Co.*, 41 Nev. 405, under section 5656.

5658. See *State ex rel. Reno v. Reno Traction Co.*, 41 Nev. 405, under section 5656.

5659. See *State ex rel. Reno v. Reno Traction Co.*, 41 Nev. 405, under section 5656.

5663. See *State ex rel. Reno v. Reno Traction Co.*, 41 Nev. 405, under section 5656.

5686. Where, on defendant's appeal from adverse judgment in justice's court to the district court on questions of law only the judgment was affirmed, defendant's right to certiorari was limited to a review of the district court judgment, from which no appeal lies; and certiorari would not lie from the supreme court to review the judgment of the justice. *State ex rel. Allen Clark Co. v. Pacific Wall Paper Co.*, 41 Nev. 501, 503 (172 P. 380).

5694-5713. In view of these sections, where a demurrer to a petition for mandamus is overruled, defendant may answer to the merits. *Flanigan v. Burritt*, 41 Nev. 504, 506 (173 P. 352).

5695. A district judge who acts as trustee of a town site, acts by virtue of his office as judge, and he is not an inferior officer to his associate judge of the district, and such associate judge cannot by mandamus compel the judge acting as such trustee to convey a lot to a purchaser offering to pay \$4.50 therefor, while such trustee demands the right to charge the purchaser \$9.50, citing *Comp. Laws*, 3542, similar to this section. *Jennett v. Stevens*, 33 Nev. 527, 528 (111 P. 1025).

See *State ex rel. Abel v. Eggers*, 36 Nev. 373, under section 5653.

Cited, *State ex rel. Dotta v. Brodigan*, 37 Nev. 41 (138 P. 914).

5698. Cited, *Flanigan v. Burritt*, 41 Nev. 506 (173 P. 352).

5699. See *Flanigan v. Burritt*, 41 Nev. 504, under sections 5694-5707.

5700. See *Flanigan v. Burritt*, 41 Nev. 504, under sections 5694-5707.

5704. See *Flanigan v. Burritt*, 41 Nev. 504, under sections 5694-5707.

5708. The writ of prohibition will issue only when there is an exercise of functions without or an excess of jurisdiction of the prohibited tribunal. *McComb v. District Court*, 36 Nev. 417, 428 (136 P. 563).

This section does not enlarge the writ so as to reach proceedings not of a judicial character, and it will not issue to prohibit county commissioners and county sheriff from enforcing an ordinance requiring licenses for selling, etc., liquors in restaurants, etc. *O'Brien v. Humboldt County Commissioners*, 41 Nev. 95-98, 101, 102 (167 P. 1007).

The office of the writ of prohibition is not to correct errors, but to prevent courts from transcending the limitation of their jurisdiction in exercise of judicial power. *Walser v. Moran*, 42 Nev. 118 (173 P. 1149).

Where a statute has imposed restrictions under which a court may act in matters otherwise within its jurisdiction, and those restrictions are disregarded, the party aggrieved may have a remedy by prohibition. *Id.*

There is no remedy by prohibition for the correction of errors or a mere irregularity in the exercise of an authority inherent in a court. *Id.*

5709. See *Walser v. Moran*, 42 Nev. 118, under section 5708.

5712. See *Flanigan v. Burritt*, 41 Nev. 504, under sections 5694-5707.

5714. Justice courts, where held—Always open—Jurisdiction.

SEC. 772. The courts held by justices of the peace are denominated justices' courts. They shall have no terms, but shall always be open. Justices' courts shall be held in their respective townships, precincts or cities. Justices' courts shall have jurisdiction of the following actions and proceedings:

1. In actions arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed three hundred dollars.

2. In actions for damages for injury to the person, or for taking, detaining, or injuring personal property, or for injury to real property where no

issue is raised by the verified answer of the defendant involving the title to or possession of the same, if the damage claimed does not exceed three hundred dollars.

3. In actions for a fine, penalty, or forfeiture, not exceeding three hundred dollars, given by statute, or the ordinance of an incorporated or unincorporated city where no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine.

4. In actions upon bonds or undertakings conditioned for the payment of money, if the sum claimed does not exceed three hundred dollars, though the penalty may exceed that sum.

5. In actions upon bonds or undertakings conditioned for the payment of money, if the sum claimed does not exceed three hundred dollars.

6. In actions to recover the possession of personal property if the value of such property does not exceed three hundred dollars.

7. To take and enter judgment on the confession of a defendant, when the amount confessed, exclusive of interest, does not exceed three hundred dollars.

8. Of actions for the possession of lands and tenements where the relation of landlord and tenant exists.

9. Of actions when the possession of lands and tenements has been unlawfully or fraudulently obtained or withheld, in which case the proceedings shall be as prescribed by the acts upon that subject.

10. Of suits for the collection of taxes, where the amount of the tax sued for does not exceed three hundred dollars.

11. Concurrent jurisdiction with the district courts of actions for the enforcement of mechanics' liens, where the amount of the lien sought to be enforced, exclusive of interest, does not exceed three hundred dollars.

The jurisdiction conferred by this section shall not extend to civil actions, in which the title of real property or mining claims, or questions affecting the boundaries of land, are involved; and if questions of title to real property be involved, cases involving such questions shall be disposed of as hereinafter provided in this act. *As amended, Stats. 1913, 359.*

Under Const. art. 6, secs. 6-8, this section, and Rev. Laws, 4726, a justice's court has jurisdiction in actions at law brought by the guardian of a minor where the amount involved does not exceed \$300. *Killgrove v. Morriss*, 39 Nev. 224, 226 (156 P. 686).

Cited, *State ex rel. Allen Clark Co. v. Pacific Wall Paper Co.*, 41 Nev. 502 (172 P. 380).

Held, that the words "sum involved" mean the sum involved in the several liens embraced in a suit, and that a justice's court had no jurisdiction in an action to foreclose mechanic's liens, where the total amount of the liens exceeds \$300, notwithstanding each of the liens is for a less amount. *Phillips v. Snowden Placer Co.*, 40 Nev. 66, 72, 86, 87 (160 P. 786).

5721. Under this section it was held that, where the issue involved the legality of a tax and the constitutionality of the ordinance imposing the tax, a municipal court had no jurisdiction, and was bound to transfer the proceedings to the district court. *In Re Dixon*, 40 Nev. 228, 235, 238, 240 (161 P. 737).

In such case, where defendant challenged the legality of the tax or questioned the constitutionality of the ordinance in the municipal court, that court was ousted of jurisdiction and should have certified the pleading to the district court. *Id.*

5722. On certiorari to review a judgment of the justice court because of a defect in the summons, the judgment should be vacated where the docket of the justice did not affirmatively show a sufficient service of summons. *Wong Kee v. Lillis*, 37 Nev. 5, 7 (138 P. 900).

Facts essential to establish the jurisdiction of a justice of the peace must affirmatively appear. A recital in a justice's docket that summons was "duly served" or that the attorney "came into court and made return on summons as by law provided," is insufficient. *Id.*

Where the summons issued out of justice court and served upon defendant was not signed by the justice, it is voidable, and may be set aside on appropriate motion. *Id.*

Under this section, personal service upon a nonresident defendant made by a nonresident whose affidavit recited that he was over the age of 18 years was ineffectual, and could not give the justice court jurisdiction to render judgment. *Lawson v. Dunseath*, 41 Nev. 321, 324, 326, 327 (170 P. 19).

5723. See *Lawson v. Dunseath*, 41 Nev. 321, under section 5732.

5726. See *Killgrove v. Morriss*, 39 Nev. 224, under section 5714.

5727. Summons, how issued, directed, and what to contain.

SEC. 785. The summons shall be substantially in the following form: In the justice's court of.....township of.....county, State of Nevada. A. B., plaintiff, vs. C. D., defendant. Summons. The State of Nevada sends greeting to said defendant: You are hereby summoned to appear before the undersigned at his office in said township within five days after service upon you of this summons, if served in the township or city in which the action is brought, or within ten days if served out of the said township or city, but within said county, or within twenty days if served elsewhere, exclusive of the day of service, and defend the above-entitled action., Dated.....Justice of the Peace.

When service of the summons is made by publication, the summons shall also contain a concise statement of the facts constituting the plaintiff's cause of action. If the plaintiff appears by attorney, the name of the attorney must be endorsed upon the summons. *As amended, Stats, 1919, 53.*

See *Wong Kee v. Lillis*, 37 Nev. 5, under section 5722.

See *Lawson v. Dunseath*, 41 Nev. 321, under section 5732.

5728. Time for appearance of defendant.

SEC. 786. The time specified in the summons for the appearance of the defendant must be as follows:

1. If an order of arrest be endorsed upon the summons, forthwith.

2. In all other cases, the summons must contain a direction that the defendant must appear and defend the action within five days, if the summons be served in the township, or city, in which the action is brought; within ten days, if served out of township, or city, but in the county in which the action, is brought, and within twenty days, if served elsewhere. *As amended, Stats, 1919, 54.*

Similar section (Comp. Laws, 3612) cited, *Sherwin v. Sherwin*, 33 Nev. 324, 326, 329 (111 P. 286; 122 P. 481; Ann. Cas. 1914A, 108).

5731. Summons, may be served out of county.

SEC. 789. The summons may be served out of the county in which the action is brought. *As amended, Stats, 1913, 360.*

5732. Summons, by whom and how served.

SEC. 790. The summons may be served by a sheriff or constable of any of the counties of this state, or by any other person of the age of twenty-one years or over, not a party to the action, and said summons must be served and returned, as provided in chapter 8 of this act, or it may be served by publication; and sections 84 to 88, both inclusive, of this act, so far as they relate to the publication of summons, are made applicable to justices' courts, the word "justice" being substituted for the word "judge"; the word "twenty" for the word "forty," and the word "four" for the word "six," wherever the same occur respectively; *provided*, that service of summons may be made upon the resident agent of any corporation doing business in this state, subject to the provisions of this act. *As amended, Stats, 1913, 360.*

Under this section, personal service upon a nonresident defendant made by a nonresident whose affidavit recited that he was over the age of 18 years was ineffectual, and could not give the justice court jurisdiction to render judgment. *Lawson v. Dunseath*, 41 Nev. 321, 324, 327 (170 P. 19).

Under this section as amended by Stats. 1913, 360, it was held: A judgment of a justice of the peace against defendants will be held void on certiorari, the records or files of the case not affirmatively showing summons was served or that defendants appeared, nothing being assumed in favor of courts of limited jurisdiction and it not being permissible to consider affidavits that summons was in fact served. *State ex rel. Jones v. Bonner*, 43 Nev. — (181 P. 586).

5734. Similar section (Gen. Stats. 3352) cited, *State ex rel. Pacific Reclamation Co. v. Duckert*, 35 Nev. 220 (127 P. 990).

The same technical pleadings are not required in a civil action in the justice's court as is required in a criminal complaint, or in pleadings in the district courts. *State ex rel. Guttery v. Langan*, 36 Nev. 577, 582 (137 P. 517).

5744. Order of arrest, and arrest of defendant.

SEC. 802. An order to arrest the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable, at the time of serving the summons, and brought before the justice, and there detained until duly discharged, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state, with intent to defraud his creditors.

2. In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied, or converted to his own use by one who received it in a fiduciary capacity.

3. When the defendant has been guilty of a fraud in contracting the debts or incurring the obligation for which the action is brought.

4. When the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors. *As amended, Stats. 1913, 364.*

5749. Attachment must issue on affidavit.

SEC. 807. A writ to attach the property of the defendant must be issued by the justice at the time of, or after, issuing summons, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in section 206. *As amended, Stats. 1915, 303.*

5752. Certain provisions apply to attachments in justices' courts.

SEC. 810. The sections of this act from section 209 to 226, both inclusive, are applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "sheriff," whenever the writ is directed to a constable, and the word "justice" being substituted for the word "judge." *As amended, Stats. 1913, 365.*

5764. Relator's special appearance challenging the jurisdiction of the justice court was not affected by the provisions of Rev. Laws, 5236, and therefore was not an answer. *Regan v. King*, 39 Nev. 216, 217, 220 (156 P. 688).

Under this section, where the defendant appeared specially and filed a motion to dismiss the complaint, but did not answer, the justice did not exceed his jurisdiction in entering a default against the defendant and denying him time to answer after the time prescribed by law had expired. *Id.*

5778. Cost must be included in judgment—Cost bill.

SEC. 836. The justice must tax and include in the judgment the costs

allowed by law to the prevailing party. The party in whose favor judgment is rendered and who claims his costs must deliver to the justice, and serve a copy upon the adverse party, within two days after the verdict or notice of the decision of the justice, or such further time as may be granted, a memorandum of the items of his costs and necessary disbursements in the action, which memorandum must be verified by the oath of the party or his attorney or agent, or by the clerk of his attorney, stating that to the best of his knowledge and belief the items are correct and that the disbursements have been necessarily incurred in the action. He shall be entitled to recover the witness fees, although at the time he may not have actually paid them. It shall not be necessary to embody in the memorandum the fees of the justice, but the justice shall add the same according to his fees, fixed by statute. Within two days after service of a copy of the memorandum, the adverse party may move the court, upon two days' notice, to relax and settle the costs, a copy of which notice of motion shall be filed and served upon the prevailing party claiming costs, and thereupon the justice shall settle the costs. If the judgment is entered by default it shall not be necessary to make service of a copy of the cost bill. *As amended, Stats. 1913, 365.*

5786. Execution, how levied—Proviso.

SEC. 844. The sheriff or constable to whom execution is directed must execute the same in the same manner as the sheriff is required by the provisions of chapter 42 of this act to proceed upon executions directed to to him; and the constable, when the execution is directed to him, is vested for that purpose with all the powers of the sheriff. The sheriff or constable to whom the execution is directed must execute the same in the same manner as the sheriff is required by the provisions of chapter 42 of this act to proceed upon executions directed to him, and the constable to whom the writ is given, and his successor in office, shall have all the powers and be subject to all the duties and liabilities therein given and imposed upon the sheriff; *provided*, that the sales of real property shall be made at the front door of the office of the justice of the peace; or if the sale be of real property in a county other than the one in which the judgment was rendered, the sale shall be at the front door of the office of the justice of the peace of the county in which the property is situated, nearest the property. *As amended, Stats. 1913, 365.*

5787. Certain chapters apply to justice courts.

SEC. 845. The provisions of chapters 42 and 43 of this act are applicable to justices' courts, the word "justice" being inserted in lieu of the words "judge" and "clerk" whenever they occur, and the word "constable" being substituted to that end for the word "sheriff." *As amended, Stats. 1913, 366.*

5792. Similar section (Cutting, 3699) cited, *Konig v. Nevada-California-Oregon Railway Co.*, 36 Nev. 197 (135 P. 141).

Under statute (Comp. Laws, 3679) similar to this, it was held that a deposit with a justice of a sum equal to the amount of the judgment appealed from, including costs, is equivalent to the filing of an undertaking for the payment of the costs on appeal. Whether such deposit is sufficient to also stay execution, not determined. *Floyd v. District Court*, 36 Nev. 349, 356, 357 (135 P. 922).

Under this section, held that the justification of the sureties in the prescribed manner is essential to the district court's jurisdiction, where their sufficiency was properly challenged. *Yowell v. District Court*, 39 Nev. 423, 428-431 (159 P. 632).

Where the sureties' sufficiency is not excepted to within five days, as required by this section, the district court acquires jurisdiction, notwithstanding that two days later the appellant admits due service of such exceptions before the justice has certified the case. *Id.*

5793. Similar section (Cutting, 3699) cited, *Konig v. Nevada-California-Oregon Ry. Co.*, 36 Nev. 197 (135 P. 141).

5812. Justices may require security for cost.

SEC. 870. The justice may in all cases require a deposit of money to cover cost of court before issuing the summons; *provided*, that when the plaintiff in an action is a nonresident of the State of Nevada, or a foreign corporation, upon motion of the opposite party at any time before final judgment such nonresident shall be required to give security for all costs and charges that may be awarded against him or it. When such security shall be required from a nonresident plaintiff all proceedings in the action shall be stayed until an undertaking executed by two or more persons and approved by the justice shall be filed with the justice to the effect that they will pay such costs and charges as may be awarded against such nonresident plaintiff by judgment or during the progress of the action. And such undertaking shall be in a sum not less than one hundred (\$100) dollars, or in lieu of such undertaking such nonresident plaintiff may deposit one hundred (\$100) dollars in lawful money of the United States with such justice, which shall be held subject to the conditions herein mentioned for the undertaking. When such security shall be ordered from a nonresident plaintiff, it shall be furnished within thirty days from notice of such order, or upon failure to furnish such security, judgment shall be entered for the defendant. A new or additional undertaking or deposit of cash may be ordered by the justice at any time upon proof that the original undertaking or deposit is insufficient and proceedings stayed for a nonresident plaintiff until the same be furnished or judgment entered against a nonresident defendant who shall fail to furnish the same within thirty days from notice of such order. After the lapse of thirty days from notice to a nonresident plaintiff that security has been ordered as required in this act and upon proof that no such undertaking or deposit of cash has been made, the justice shall enter judgment against such plaintiff. *As amended, Stats. 1917, 424.*

5815. Under this section it was held that relator's special appearance challenging the jurisdiction of the justice court was not affected by the provisions of Rev. Laws, 5326, and therefore was not an answer. *Began v. King*, 39 Nev. 216, 220 (156 P. 688).

5817. Cited, *Wren v. Dixon*, 40 Nev. 215 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).

5818. Under this section it was held that the action of a trial court in calling a jury in condemnation proceedings was justified; since the general rule against the retrospective construction of a statute does not apply to statute relating only to remedies. *Truckee River G. E. Co. v. Durham*, 38 Nev. 311, 316 (149 P. 61).

5838. Divorce, how obtained—Causes for divorce.

SEC. 22. Divorce from the bonds of matrimony may be obtained, by complaint under oath, to the district court of the county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided six months before suit be brought, for the following causes:

First—Impotency at the time of the marriage continuing to the time of the divorce.

Second—Adultery, since the marriage, remaining unforgiven.

Third—Wilful desertion, at any time, of either party by the other, for the period of one year.

Fourth—Conviction of felony or infamous crime.

Fifth—Habitual gross drunkenness contracted since marriage of either party, which shall incapacitate such party from contributing his or her share to the support of the family.

Sixth—Extreme cruelty in either party.

Seventh—Neglect of the husband, for the period of one year, to provide the common necessities of life, when such neglect is not the result of poverty on the part of the husband, which he could not avoid by ordinary industry.

SEC. 2. All acts or parts of acts in conflict with this act are hereby repealed. *As amended, Stats. 1913, 10; 1915, 26.*

Not to affect certain actions.

SEC. 4. This act shall in no manner apply to, affect or invalidate any action for divorce commenced or pending in any court before January 1, 1914, but all such actions shall be heard and determined upon the provisions of law now existing. *Added, Stats. 1913, 159.*

Actual living in the county by plaintiff for the six months is necessary to give the court jurisdiction under this section. "Resided" means permanency as well as continuity. Actual residence is the place of actual abode; of physical presence—the abiding-place. Legal residence may be merely ideal, but actual residence must be substantial. Where residence is made the basis of jurisdiction, parties who seek to invoke the power of the court to relieve them from the marriage tie must bring themselves clearly and affirmatively within the jurisdiction of the court. *Fleming v. Fleming, 36 Nev. 135-141 (134 P. 445).*

Under this section a complaint alleging that the plaintiff is a resident of a certain county within this state and that the defendant "is now within and can be found in such county" alleges facts sufficient to invest the court with jurisdiction. *Tiedemann v. Tiedemann, 36 Nev. 495, 497, 500, 501, 503 (137 P. 824).*

Under this section a six-months' residence is essential only when the plaintiff relies alone on his or her residence. Rev. Laws, 3609, only affects the character of residence where a residence is essential to jurisdiction. *Id.*

"Found," as used in this section, is used in the same sense that it is used in other provisions of the civil practice act relative to the service of process, and means the county in which service of summons may be had personally upon the defendant. *Id.*

The act of February 15, 1875 (Stats. 1875, 63) entitled "An act to amend an act entitled 'An act relating to marriage and divorce,' approved November 28, 1861," and containing only three sections, purports, by section 1, to amend section 22 of the original act by reenacting the section as changed. Sections 2 and 3 are the ordinary repeal of inconsistent laws, and a provision as to when it shall take effect. The act of February 20, 1913 (Stats. 1913, 10) entitled "An act to amend an act entitled 'An act to amend an act relating to marriage and divorce, approved November 28, 1861,'" purports to amend "section 22" by reenacting it with the changes effected by the amendment and repealing conflicting acts. Held that, in view of Const. art. 4, sec. 19, providing that no law shall be revised or amended by reference, but the act or section as amended shall be reenacted and published, the act of 1875 did not repeal section 22 of the original act, and the act of 1913 was not void as attempting to amend section 22, after such repeal, but the unchanged part of the section as originally enacted continued in force, notwithstanding the amendments so that the title of the act of 1913 is sufficient. *Worthington v. District Court, 37 Nev. 212-221, 226 (142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696).*

The provision in the act of February 20, 1913 (Stats. 1913, 10), amending section 22 of the marriage and divorce act of 1861 (Stats. 1861, 94), as amended in 1875 (Stats. 1875, 63), by declaring that when, at the time of the accrual of a cause for divorce, the parties shall not both be bona-fide residents of the state, no court shall grant divorce, unless either party shall have been a bona-fide resident for not less than one year next preceding the commencement of the action, is of general uniform operation throughout the state, and applies the same in every part of the state, and to all persons under similar circumstances, and is not a local or special law within Const. art. 4, sec. 20, prohibiting any local or special law granting a divorce. *Id.*

The act of February 20, 1913 (Stats. 1913, 10), amending section 22 of the marriage and divorce act of 1861 (Stats. 1861, 94) as amended in 1875 (Stats. 1875, 63), by declaring that when, at the time the cause for divorce accrues, the parties shall not have been bona-fide

residents, the court shall not grant a divorce unless either party shall have been a bona-fide resident for not less than a year, provides for a classification of nonresidents at the time of the accrual of the cause of action for divorce, and the classification is reasonable, and does not conflict with the fourteenth amendment to the federal constitution guaranteeing the equal protection of the laws. *Id.*

The provisions of the act of February 20, 1913 (Stats. 1913, 10), amending section 22 of the marriage and divorce act of 1861 (Stats. 1861, 94), as amended by the act of February 15, 1875 (Stats. 1875, 63), by declaring that the court shall not grant divorce, unless either party shall have been a resident for not less than one year, relates merely to procedure, and not to the cause of action, and applies to cases where the cause of action accrued before the act took effect. *Id.*

The constitutional prohibition against the impairment of obligation of contracts does not apply to divorces, which are under the control of the legislature, and the provision of the above-mentioned act declaring that when, at the time a cause of divorce accrues, the parties are not both residents, the court cannot have jurisdiction, unless either party has been a bona-fide resident for not less than one year, does not impair the obligation of contracts, though it be construed as relating to a cause for divorce. *Id.*

Under this section, it was held that there was no necessary repugnancy between the provisions of the Revised Laws relating to residence and Stats. 1911, 318; the latter merely adding the requirement of physical presence to the former general requirement of the intention permanently to reside; so that the plaintiff, taking up her residence solely for the purpose of maintaining a divorce action, did not acquire such residence as was necessary to give the court jurisdiction of her suit. *Presson v. Presson*, 38 Nev. 203-206 (147 P. 1081).

Under this section as amended by Stats. 1915, 26, the complaint of a husband, not alleging his residence in the county, but merely that he is now therein, does not bring his status within the jurisdiction of the court, the matrimonial domicile of the parties being in another state, and the marital offenses complained of being such as might have been determined by the courts of the matrimonial domicile, though the complaint alleges that the defendant can be found in and is a resident of the county, the right of the wife to acquire another domicile separate from him, where their unity is dissolved, not availing him. *Aspinwall v. Aspinwall*, 40 Nev. 55, 59 (160 P. 253).

At common law, it was a well-founded rule that a woman on her marriage lost her own domicile and acquired that of her husband. *Merritt v. Merritt*, 40 Nev. 385, 389 (160 P. 22; 164 P. 644).

A wife may acquire and maintain a domicile separate from that of her husband. *Id.*

A complaint in divorce alleging plaintiff's residence in W. County, that defendant is within the jurisdiction of the court and can be served in W. County, gives the court jurisdiction under this section, giving jurisdiction if defendant can be found in the county. *Id.*

Evidence held sufficient to establish plaintiff's bona-fide residence within the state, though she admitted she was living at a hotel and owned no property within the state. *Id.*

When the husband gives up the domicile at one place and establishes another, and in good faith urges his wife to live with him there, her refusal to accept the invitation, if without sufficient reason, amounts to "desertion." *Roberson v. Roberson*, 41 Nev. 276, 281 (169 P. 333).

In a suit by husband, who was first guilty of desertion, for divorce on the ground of desertion of the wife, evidence held insufficient to show that the husband's invitation to the wife to come and live with him was made in good faith. *Id.*

Under this section, a district court has jurisdiction to grant divorce for extreme cruelty and desertion to a husband resident in the county for a year, though the acts complained of all occurred in another state, under whose statutes there was no cause of action for divorce on those grounds, since the law of the forum controls, it being the legislative intent that the district court have jurisdiction to determine the marriage status of parties whose residential qualifications meet the requirements of the statute, regardless of where the cause of action may have arisen; marriage, though a civil contract, constituting an exception to the rule of *lex loci contractus*. *Blakeslee v. Blakeslee*, 41 Nev. 235, 242 (168 P. 950).

In a suit to set aside a divorce decree, a complaint alleging that the decree was void,

because plaintiff therein was not a bona-fide resident of the county wherein the decree was granted, was insufficient, since under this section as amended by Stats. 1915, 26, relating to jurisdiction of divorce actions, jurisdiction might have been obtained on another ground than that of the residence of the plaintiff, and it was not alleged that jurisdiction was not dependent on such other grounds. *Wade v. Wade*, 41 Nev. 533, 535 (173 P. 553).

5840. By a divorce decree and also by agreement of the parties, community property of husband and wife—a house and lot—was “set aside for the use, support, maintenance, and education of the minor children.” Held, that the purposes of the trust included any disposition necessary for the support and education of the children, and hence the execution of a mortgage by the guardian for \$3,000 for the purpose of paying off a prior mortgage and saving the property as a home for the children was within the purposes of the trust and authorized. *Schmitt v. Jenson*, 37 Nev. 150, 153 (140 P. 518).

5841. See *Schmitt v. Jenson*, 37 Nev. 150, under section 5840.

The power of the court given by this section to make such disposition of the property of the parties as shall appear just and equitable in granting a decree of divorce, is limited by Const. art 4, sec. 21, Stats. 1864–65, 239, and Stats. 1873, 193, determining the property rights of husband and wife. *Walker v. Walker*, 41 Nev. 4, 8, 9, 10 (164 P. 653).

Under the above authorities the dissolution of the marriage does not of itself operate to change the property rights. *Id.*

Rev. Laws, 2166, determines the rights of the parties to the community property on dissolution of the marriage, though the earlier statute, empowering the court to dispose of property on granting a divorce, has not been amended or repealed in terms. *Id.*

The declaration of Rev. Laws, 2172, that neither husband nor wife has any interest in the property of the other, is subject to the exceptions of Rev. Laws, 2173, and under the latter provision one spouse may acquire an interest, legal or equitable, in the separate property of the other which the court, in granting a divorce, can protect under this section. *Id.*

Where a husband, whose wife was granted a divorce for his misconduct, had settled on her at the time of the marriage property of the value previously agreed on, which had in the meantime enormously increased in value, and which left the husband without property of his own, the court can, under this section, protect any equity of the husband in such property notwithstanding his guilt, which is only one of the factors to be considered in determining the property rights. *Id.*

In consideration of this section, Stats. 1864–65, 239, sec. 12 (Rev. Laws, 2166, 2188, 5841, and 5843), it was held in view of another section of the same act appearing as Rev. Laws, 5843, and declaring that when marriage shall be dissolved by the husband being sentenced to imprisonment and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead; but in other cases the court shall set apart such portion for her support and the support of their children that shall be deemed just, and, as the act of 1861 was passed before the creation of community property, effect cannot be given to it, particularly in view of the construction by the California courts of the later statutes, which must be deemed to have been adopted when the statutes were adopted from that state; hence decree of divorce in favor of the husband for desertion does not, though there was no adjudication as to property rights, deprive the wife of her rights in the community property. *Johnson v. Garner*, 233 F. 757, 762–766, 769.

5843. Disposition of property—Rule when wife obtains decree on ground of imprisonment or adultery of husband — Alimony pendente lite—Procedure—Orders.

SEC. 27. When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead; but in other cases the court may set apart such portion for her support, and the support of their children, as shall be deemed just and equitable. In the event of the remarriage of the wife, and there being issue of the former

marriage, the court in which the divorce was granted may, on proper showing for cause, enter an order that the alimony previously awarded, or part thereof, be paid as ordered by the court for the benefit of the minor children. In any suit for divorce now pending, or which may hereafter be commenced, the court or judge may, in its discretion, upon application, of which due notice shall have been given to the husband or his attorney, at any time after the filing of the complaint, require the husband to pay such sums as may be necessary to enable the wife to carry on or defend such suit, and for her support and for the support of the children of the parties during the pendency of such suit; and the court or judge may direct the application of specific property of the husband to such object, and may also direct the payment to the wife for such purpose of any sum or sums that may be due and owing the husband from any quarter, and may enforce all orders made in this behalf, as provided in section 24 of this act. *As amended, Stats. 1915, 324.*

Under this section it was held that, though alimony cannot be allowed if the marriage in fact be void, the district court has jurisdiction to award temporary alimony. *Poupart v. District Court*, 34 Nev. 336, 339 (123 P. 769).

Despite this section, where a divorce decree provides for installment payments of alimony and for support of child, the former wife cannot, nearly three years after judgment, and after husband's death, revive cause, and, under guise of making his representatives parties defendant, retry issue of alimony and child's support and recover judgment for lump sum instead of monthly payments, and declare it a prior lien upon husband's estate, a judgment entirely different from the original judgment. *Sweeney v. Sweeney*, 42 Nev. 432, 439 (179 P. 638, 640).

In consideration of this section, Stats. 1864-65, 239, sec. 12 (Rev. Laws, 2166, 2188, 5841, and 5843), it was held in view of another section of the same act appearing as Rev. Laws, 5843, and declaring that when marriage shall be dissolved by the husband being sentenced to imprisonment and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead; but in other cases the court shall set apart such portion for her support and the support of their children that shall be deemed just, and, as the act of 1861 was passed before the creation of community property, effect cannot be given to it, particularly in view of the construction by the California courts of the later statutes, which must be deemed to have been adopted when the statutes were adopted from that state; hence decree of divorce in favor of the husband for desertion does not, though there was no adjudication as to property rights, deprive the wife of her rights in the community property. *Johnson v. Garner*, 233 F. 757, 764.

SEPARATE MAINTENANCE

An Act providing, in certain cases, for actions for separate maintenance by the wife against her husband, permitting suitable allowances for the prosecution of the action and for the support and custody of the children and establishing the remedies, procedure and venue in such actions.

Approved March 13, 1913, 120

Wife may recover for support of herself and children.

SECTION 1. When the wife has any cause of action for divorce against her husband, or when she has been deserted by him and such desertion has continued for the space of ninety days, she may, without applying for a divorce, maintain in the district court, an action against her husband for permanent support and maintenance of herself or of herself and of her child or children.

Court may require husband to pay expense.

SEC. 2. During the pendency of such action, the court may, in its discretion, require the husband to pay any money necessary for the prosecution

of the action and for the support and maintenance of the wife or of the wife and of her child or children.

Power of court.

SEC. 3. In any such action the court may assign and decree to the wife the possession of any real or personal property of the husband and may order or decree the payment of a fixed sum of money for the support of the wife or for the support of the wife and of her child or children and provide that the payment of the same be secured upon real estate, or other security may be required, or any other suitable provision may be made; payments to be made at such times and in such manner as to the court may seem proper. And the court shall have power to change, modify or revoke its orders and decrees from time to time. No order or decree shall be effective beyond the joint lives of the husband and wife.

Husband may be enjoined.

SEC. 4. At any time after the filing of the complaint the wife may file a notice of pendency of the action in the office of the county recorder of any county in which the husband may have real property, which shall have the same effect as such notice in actions directly affecting real property. The court may also enjoin the husband from disposing of any property during the pendency of the action.

Preliminary and final orders.

SEC. 5. The court in such actions may make such preliminary and final orders as it may deem proper for the custody, control and support of any minor child or children of the parties.

Orders may be enforced—Receiver, when.

SEC. 6. The final judgment and any order or orders made before or after judgment may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary; a receiver may be appointed, security may be required, execution may issue, under which real or personal property of the husband may be sold as under execution in other cases, and disobedience of any order or orders may be punished as a contempt.

Procedure same as for divorce.

SEC. 7. In all cases commenced hereunder, the proceedings and practice shall be the same, as nearly as may be, as is now or hereafter may be provided in actions for divorce; and suit may be brought, at the option of the wife, either in the county in which the wife shall reside, at the time the suit is commenced, or in the county in which the husband may be found.

5894. Who entitled to letters of administration—Precedence.

SEC. 38. Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

First—The surviving husband or wife, or such person as he or she may request to have appointed.

Second—The children.

Third—The father, or the mother.

Fourth—The brother.

Fifth—The sister.

Sixth—The grandchildren.

Seventh—Any other of the kindred entitled to share in the distribution of the estate.

Eighth—The creditors.

Ninth—The public administrator.

Tenth—Any of the kindred not above enumerated, within the fourth degree of consanguinity.

Eleventh—Any person or persons legally competent. *As amended, Stats. 1913, 28; 1917, 355.*

5910. Executor and administrator to take oath—Form of—Filed and recorded—Certified copies of records and papers have force of originals.

SEC. 54. Before letters testamentary or of administration shall be issued to the executor or administrator he shall take and subscribe an oath or affirmation before an officer authorized to administer oaths that he will perform, according to law, the duties of executor or administrator; said oath shall be filed and recorded by the clerk. All duly certified copies of any record or paper in matters of estates shall have the same force and effect in all cases whatsoever as the original papers would have. *As amended, Stats. 1919, 31.*

5911. Under this section, the relationship of trustees and cestui que trust between the executor and administrators and the heirs is not created in so far as the same might apply to the realty of an estate, so that the rule that a statute of limitations running against a trustee holding the legal title to realty runs also against cestui does not apply. *Wren v. Dixon, 40 Nev. 172, 213 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).*

5943. Appraisement, how made—Compensation of appraisers limited—Inventory, what to include.

SEC. 87. For the purpose of making the appraisement, the court or judge shall appoint not more than three disinterested persons who shall be entitled to a reasonable compensation for their services, to be allowed by the court. This compensation as allowed shall be in the form of a bill of items for their services, including all necessary disbursements, which shall be sworn to by them, and filed at the same time as the inventory. The compensation shall not exceed five dollars per day each, and may be paid out of the estate at any time. The inventory shall include all the estate of the deceased wherever situated; *provided*, that where any estate consists of money, deposits in banks, bonds, policies of life insurance or securities for money or evidence of indebtedness, when the same is equal in value to money, the court or judge shall not appoint appraisers, but shall record the value of the same in the minutes of the court. *As amended, Stats. 1919, 54.*

5960. Under the statutory provisions and procedure relative to the estates of decedents the title to real estate vests in the heirs and devisees at the moment of the death of the testator or intestate, subject only to the right of possession of the executor or administrator under this section, for the payment of the debts and expenses of administration, with the right in the administrator to possession until the estate is settled or delivered over to the parties entitled by the order of the probate court. *Wren v. Dixon, 40 Nev. 172, 208 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).*

5967. Under Stats. 1897, 119, similar to this section, construed with other statutes, it was held that a widow cannot have set aside to her as a homestead land which was her husband's separate property at his death, and had not been declared on as a homestead; there being other heirs. *In Re Cook's Estate, 34 Nev. 218, 235, 238 (117 P. 27).*

5968. *Cited, Guisti v. Guisti, 41 Nev. 355 (171 P. 161).*

5963. Under this section and Rev. Laws, 5964, 5967, and 6041, as to the duties of an administrator, expedient administration is required, and where an estate had cash on hand to meet all indebtedness, and everything was present to facilitate a speedy discharge of the trust, but the administrator permitted the estate to drag on for nearly seven years without an accounting and without any attempt to secure an order for expenditure of money, he was guilty of a breach of his duties. *In Re Delaney's Estate, 41 Nev. 384, 400 (171 P. 383; L. R. A. 1918D, 1022).*

5964. See *In Re Delaney's Estate*, 41 Nev. 384, under section 5963.

A claim which is to be paid at a future date, and is so contingent that it is uncertain whether or not any demand will accrue, is not such a claim as is required to be filed within three months after the date of the first publication of notice to creditors under this section. *Pruett v. Caddigan*, 42 Nev. 329, 333, 334 (176 P. 788).

5965. This section contemplates that offsets in favor of the decedent and known to the claimant be credited upon the claim. *Hibbard v. Clark*, 39 Nev. 230, 233 (156 P. 447).

In a complaint on a rejected claim against decedent's estate, the facts constituting an offset or counterclaim in favor of the estate must be alleged; the general rule of pleading that a complaint need not allege facts constituting an offset or counterclaim being inapplicable by reason of the provisions of this section which contemplates the credit of offsets upon such claims. *Id.*

5967. See *In Re Delaney's Estate*, 41 Nev. 384, under section 5963.

5972. The judicial power, authority and duty of the United States district court is wholly independent of state action and cannot directly or indirectly be destroyed, abridged, limited or rendered less efficacious by any state statutes or by any state authority whatever, so that this section and sections 5974 and 5975 could not confer on the district courts of the state a practically exclusive jurisdiction over the property owing deceased party defendant in possession of the United States district court by its receiver and in course of distribution to judgment and other creditors. *Johnson v. Johnson*, 225 F. 414, 416.

5974. See *Johnson v. Johnson*, 225 F. 414, under section 5972.

5975. See *Johnson v. Johnson*, 225 F. 414, under section 5972.

An Act authorizing the sale, lease or option of mines, mining claims or mining property owned or held by estates, and providing for the conveyance thereof.

Approved February 12, 1917, 15

Sale or lease of mining claims or mining property.

SECTION 1. When all or any portion of the estate of any deceased person, or of any ward under guardianship, consists of mines, mining claims or mining property, whether patented or unpatented, or of interests in mines, mining claims, and mining property, the administrator or executor of the estate of such deceased person, or the guardian of the property of the ward, may petition the court having jurisdiction of the estate for leave to lease such mines, mining claims, or mining property, or such interests in mines, mining claims or other mining property, belonging to the estate of the deceased, or to the ward, with an option to the lessee to purchase the same; and if upon the hearing it appears to the satisfaction of the court that it is for the best interest of the estate or of the ward, the court may make an order authorizing the administrator, executor or guardian to lease all or any portion of such mines, mining claims or other mining property, or all, or any portion, of the interests therein belonging to the estate or to the ward, as he shall designate in the order, and to give an option to the lessee to purchase the same within a specified time at a stipulated price; and when such order has been made, the executor, administrator, or guardian may lease the property or the interests in the property specified in said order, and give the lessee an option to purchase the same within the time, at the price, and on the terms specified in the order.

When deed may be executed.

SEC. 2. If the lessee complies with the terms of the lease and accepts the option and tenders the stipulated price, he shall be entitled to a deed to be executed and delivered by the administrator, executor or guardian in the name of the interested heirs or wards for the mines, mining claims or other mining property, or the aforesaid interest therein upon which the option

was given, and title shall pass upon execution and delivery of such deed acknowledging payment of such price without further order by the court.
[This act supplemental to Rev. Laws, 5980.]

6018. Cited, *Guisti v. Guisti*, 41 Nev. 355 (171 P. 161).

6022. Under *Cutting*, 2951, similar to this, an action for damages caused by wrongful ejection of a passenger from a train, where the passenger had paid his fare and received a ticket, is a transitory action upon a contract which may be continued by the administratrix of the plaintiff after his death. *Forrester v. Southern Pacific Company*, 36 Nev. 247, 265 (134 P. 753; 48 L. R. A. (N.S.) 1).

6041. See *In Re Delaney's Estate*, 41 Nev. 384, under section 5963.

6052. It is within the power of the state to determine the order in which debts of an estate shall be paid; therefore federal courts must give effect to this section declaring priorities. *Johnson v. Garner*, 233 F. 758, 767, 769.

Under this section it was held that, as the term "debt," used in the statute, signifies no more than a sum of money owing on a contract, express or implied, only the profits of the community estate converted by the husband can be deemed debts, but the husband must be treated as trustee of the wife's interest in the community property, and as to such she takes priority over creditors who reduced their debts to judgment during the husband's lifetime, while as to the debt for the profits withheld she does not. *Id.*

6057. The obligation of a surety on a guardian's bond, being a subsisting one, is not a "contingent claim" referred to in this section, providing for the payment into court of amount that would be payable if the whole were established as absolute. *Pruett v. Caddigan*, 42 Nev. 329, 335, 336 (176 P. 787).

6089. It cannot be said that Rev. Laws, 5329, was intended to cover the whole subject as to appeals so as to make it operate to repeal all other statutes on the subject including Rev. Laws, 4833; Rev. Laws, 4564, this section and Rev. Laws, 6112 and 6113, providing for appeals and certain other orders. *State ex rel. Pacific Reclamation Co. v. Ducker*, 35 Nev. 214, 223 (127 P. 990).

6112. See *State ex rel. Pacific Reclamation Co. v. Ducker*, 35 Nev. 214, under section 6089.

Where a petition is presented in the district court for removal of an administrator, setting up his alleged wrongful acts, and, after hearing both petitioner and respondent, decision was rendered dismissing the petition, such action was not reviewable by mandamus since the court exercised jurisdiction and discretion in hearing and deciding the case and petitioner had a plain, speedy and adequate remedy at law by appeal from such decision under this section. *State ex rel. Freyesleben v. District Court*, 40 Nev. 163, 169 (161 P. 510).

6116. Descent and distribution—When to escheat.

SEC. 259. When any person having title to any estate, not otherwise limited by marriage contract, shall die intestate as to such estate, it shall descend and be distributed, subject to the payment of his or her debts, in the following manner:

First—If there be a surviving husband or wife, and only one child, or the lawful issue of one child, one-half to the surviving husband or wife, and one-half to such child or issue of such child. If there be a surviving husband or wife and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his or her children, and to the lawful issue of any deceased child by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants, and if all of the said descendants are in the same degree of kindred to the intestate they shall share equally, otherwise they shall take according to the right of representation.

Second—If he or she shall leave no issue, the estate shall go, one-half to

the surviving husband or wife, one-fourth to the intestate's father, and one-fourth to the intestate's mother, if both are living; if not, one-half to either the father or mother then living. If he or she shall leave no issue, nor father, nor mother, the whole community property of the intestate shall go to the surviving husband or wife, and one-half of the separate property of the intestate shall go to the surviving husband or wife, and the other half thereof shall go in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation. If he or she shall leave no issue, or husband, or wife, the estate shall go, one-half to the intestate's father and one-half to the intestate's mother, if both are living; if not, the whole estate shall go to either the father or mother then living. If he or she shall leave no issue, father, mother, brother, or sister, or children of any issue, brother or sister, all of the property, both community and separate, of the intestate shall go to the surviving husband or wife.

Third—If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation.

Fourth—If the intestate shall leave no issue, nor husband, nor wife, nor father, nor mother, and no brother or sister living at his or her death, the estate shall go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those who claim through ancestors more remote; *provided, however*, if any person shall die leaving several children, or leaving one child and issue of one or more children, and any such surviving child shall die under age and not having been married, all of the estate that came to such deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who may have died, by right of representation.

Fifth—If at the death of such child, who shall die under age and not having been married, all the other children of this said parent being also dead, and any of them shall have left issue; the estate that came to such child by inheritance from his or her said parent shall descend to all the issue of the other children of the same parent, and if all the said issue are in the same degree of kindred to said child they shall share the said estate equally; otherwise they shall take according to the right of representation.

Sixth—If there be no surviving husband, or wife, or kindred, except a child or children, the estate shall, if there be only one child, all go to that child; and if there be more than one child, the estate shall descend and be distributed to all the intestate's children, share and share alike.

Seventh—If there be no surviving husband, or wife, or kindred, except a child or children and the lawful issue of a child or children, the estate shall descend and be distributed to such child or children and lawful issue of such child or children by right of representation, as follows: To such child or children each a child's part, and to the lawful issue of each deceased child, by right of representation, the same part and proportion that its parent would have received in case such parent had been living at the time of the intestate's death; that is, the lawful issue of any deceased child shall receive the part and proportion that its parent would have received had such parent been living at the time of the intestate's death.

Eighth—If there be no surviving husband, or wife, or kindred, except the lawful issue of a child or children, all of the estate shall descend and be distributed to the lawful issue of such child or children by right of representation, and this rule shall apply to the lawful issue of all such children and to their lawful issue ad infinitum.

Ninth—If the intestate shall leave no husband, nor wife, nor kindred, the estate shall escheat to the state for the support of the common schools. *As amended, Stats. 1899, 113; 1901, 44; 1903, 218; 1913, 56; 1915, 149; 1917, 37.*

Cited, *Winters v. Winters*, 34 Nev. 331 (123 P. 17, 1135).

Similar statutes, 1897, 158; 1899, 110; 1901, 44; 1903, 218; 1915, 149; cited, *In Re Kattenhorn's Estate*, 41 Nev. 379, 380, 383 (171 P. 164).

6131. Idem—Duty of attorney-general—To file information—Citation to issue.

SEC. 274. Whenever the attorney-general shall be informed, or shall have reason to believe, that any real or personal estate has become escheatable to this state for the reasons specified in the preceding section, or that any such estate has for any other reason become escheatable, it shall be his duty to file an information in behalf of the state in the district court of the county wherein such estate, or any part thereof, is situated, setting forth a description of the estate, the name of the person last lawfully seized, the name of the terre-tenant and persons claiming such estate, if known, and the facts and circumstances in consequence of which said estate is claimed to have become escheated, and alleging that by reason thereof the State of Nevada has by law right to such estate; whereupon, such court shall order that a citation be issued to such person or persons, bodies politic, or corporate, alleged in such information to hold, possess or claim such estate, requiring them to appear and show cause why such estate should not be vested in the State of Nevada, said citation to be made returnable within the time allowed by law in other civil actions. The court may also, if deemed advisable, order the citation to be published in a newspaper published in said county (if any) and, if none, then in some other newspaper in this state; *provided, however*, that when the residue remaining of any estate mentioned in the preceding section, after the payment of the costs and expenses of administration and creditors' claims, and other expenses, does not exceed the sum or value of five hundred dollars, the proceedings hereinbefore specified for the escheating of such estate to the State of Nevada shall be dispensed with, and the administrator of such estate, or other legal representative of the deceased, shall, on the order of the court, pay over or deliver such residue to the county treasurer of the county wherein said estate is being probated or is situated, for the benefit of the State of Nevada, and the receipt or certificate of said county treasurer, evidencing such payment or delivery, shall be filed with the clerk of the district court of the county wherein such estate is being probated or is situated, and upon such filing said administrator, or other legal representative of the deceased, shall be released and discharged from all further liability as to such residue, and upon such payment or delivery to him said county treasurer shall notify the attorney-general of the State of Nevada of the same, and shall pay over or deliver such residue to the state treasurer of the State of Nevada, taking his receipt or certificate therefor, and such payment or delivery shall be subject to all of the provisions of this act concerning the recovery of the same from this state by any person or persons found to be entitled thereto. *As amended, Stats. 1919, 34.*

6133. See *State ex rel. Pacific Reclamation Co. v. Ducker*, 35 Nev. 223, under section 6089.

6149. This act cited, *O'Donnell v. District Court*, 40 Nev. 432 (165 P. 759).

6153. Idem—Father and mother legal guardian.

SEC. 5. The father and mother, being each competent to transact his or her own business, and not otherwise unsuitable, shall be entitled to the

guardianship of the minor. If either the father or mother be dead or be unable or refuse to take the custody of the minor, or has abandoned his or her family, the other is entitled thereto. *As amended, Stats. 1913, 27.*

6154. Idem—Powers and duties of guardian—Lawful age.

SEC. 6. The guardian or guardians appointed as aforesaid shall have the custody and tuition of the minor, and the care and management of the estate, of which appointed, including the earnings of said minor, until such minor shall attain the age of twenty-one years, if a male, or eighteen years, if a female, unless sooner discharged according to law. *As amended, Stats. 1913, 27.*

6155. Idem—Bond to be given—Sureties—Condition of bond—Letters of guardianship, form of—No bond, when.

SEC. 7. Before the order appointing any person guardian under this act shall take effect, and before letters shall issue, the person or persons so appointed shall take and subscribe the official oath, to be endorsed on the letters, and shall give bond to the minor or minors in such sum as the court may order, with at least two sufficient sureties to be approved by the court or judge, and conditioned that the guardian shall faithfully execute the duties of his or her trust according to law; and the following conditions shall be deemed to form a part of such bond without being expressed therein:

First—To make a full and true inventory of all the estate, real and personal, of the ward, and have the same appraised by three disinterested persons, to be appointed by the court or judge, and to return and file in the clerk's office within twenty days after qualifying such inventory and appraisal under oath.

Second—To manage all such estate according to law and for the best interest of the ward, and to discharge faithfully his or her trust in relation thereto, and also in relation to the care, custody, and education of the ward.

Third—To render under oath a true account of the property, estate and moneys of the ward, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within one year after appointment, and annually thereafter, and at such other time as the court may direct.

Fourth—At the expiration of his trust, to settle his or her final account with the court or with the ward if of legal age, or his or her legal representative, and to pay over all moneys, and deliver all the estate and effects remaining in his or her hands or justly chargeable to the guardian on such settlement, to the person or persons lawfully entitled thereto.

Upon filing such bonds, duly approved by the district judge, and taking the oath of office as aforesaid, the clerk shall issue letters of guardianship to the person or persons appointed. Letters of guardianship may be substantially in the following form: (After properly entitling court and cause.)

WHEREAS, By order of said court herein made and entered on the..... day of....., I,....., was (or were, as the case may be) appointed guardian of the (person and estate, or either, as the case may be) of....., minor; and, whereas, the said..... has (or have, as the case may be) duly qualified according to law, these letters are hereby issued to....., as such guardian. Witness my hand and the seal of said court, this..... day of.....

....., Clerk.

Provided, If a person is appointed in a will to be guardian without bonds, the court may direct letters to issue to such on taking and subscribing the oath of office.

5793. Similar section (Cutting, 3699) cited, *Konig v. Nevada-California-Oregon Ry. Co.*, 36 Nev. 197 (135 P. 141).

5812. Justices may require security for cost.

SEC. 870. The justice may in all cases require a deposit of money to cover cost of court before issuing the summons; *provided*, that when the plaintiff in an action is a nonresident of the State of Nevada, or a foreign corporation, upon motion of the opposite party at any time before final judgment such nonresident shall be required to give security for all costs and charges that may be awarded against him or it. When such security shall be required from a nonresident plaintiff all proceedings in the action shall be stayed until an undertaking executed by two or more persons and approved by the justice shall be filed with the justice to the effect that they will pay such costs and charges as may be awarded against such nonresident plaintiff by judgment or during the progress of the action. And such undertaking shall be in a sum not less than one hundred (\$100) dollars, or in lieu of such undertaking such nonresident plaintiff may deposit one hundred (\$100) dollars in lawful money of the United States with such justice, which shall be held subject to the conditions herein mentioned for the undertaking. When such security shall be ordered from a nonresident plaintiff, it shall be furnished within thirty days from notice of such order, or upon failure to furnish such security, judgment shall be entered for the defendant. A new or additional undertaking or deposit of cash may be ordered by the justice at any time upon proof that the original undertaking or deposit is insufficient and proceedings stayed for a nonresident plaintiff until the same be furnished or judgment entered against a nonresident defendant who shall fail to furnish the same within thirty days from notice of such order. After the lapse of thirty days from notice to a nonresident plaintiff that security has been ordered as required in this act and upon proof that no such undertaking or deposit of cash has been made, the justice shall enter judgment against such plaintiff. *As amended, Stats. 1917, 424.*

5815. Under this section it was held that relator's special appearance challenging the jurisdiction of the justice court was not affected by the provisions of Rev. Laws, 5326, and therefore was not an answer. *Regan v. King*, 39 Nev. 216, 220 (156 P. 688).

5817. Cited, *Wren v. Dixon*, 40 Nev. 215 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).

5818. Under this section it was held that the action of a trial court in calling a jury in condemnation proceedings was justified; since the general rule against the retrospective construction of a statute does not apply to statute relating only to remedies. *Truckee River G. E. Co. v. Durham*, 38 Nev. 311, 316 (149 P. 61).

5838. Divorce, how obtained—Causes for divorce.

SEC. 22. Divorce from the bonds of matrimony may be obtained, by complaint under oath, to the district court of the county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided six months before suit be brought, for the following causes:

First—Impotency at the time of the marriage continuing to the time of the divorce.

Second—Adultery, since the marriage, remaining unforgiven.

Third—Wilful desertion, at any time, of either party by the other, for the period of one year.

Fourth—Conviction of felony or infamous crime.

Fifth—Habitual gross drunkenness contracted since marriage of either party, which shall incapacitate such party from contributing his or her share to the support of the family.

Sixth—Extreme cruelty in either party.

Uniformity of laws.

SEC. 2. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

6239. Under the clear provisions of the habeas corpus act (Rev. Laws, 6239, 6241; 6242, 6243, 6245) the warrant of a committing magistrate and the bench warrant under an indictment are not final judgments, nor conclusive, and the judge or court hearing an application for a writ of habeas corpus may take or hear evidence against the warrants and indictment, and may discharge the accused when the magistrate, grand jury, or court have exceeded their jurisdiction, when the process has been issued in a case not allowed by law, or when the party has been committed on a criminal charge without reasonable or probable cause. *Eureka Bank Cases*, 35 Nev. 80, 100 (126 P. 655; 129 P. 308).

6240. See *Eureka Bank Cases*, 35 Nev. 80, under section 6239.

6242. See *Eureka Bank Cases*, 35 Nev. 80, under section 6239.

6243. See *Eureka Bank Cases*, 35 Nev. 80, under section 6239.

6244. The provision in this section, that it shall be the duty of the "judge to remand the party if it shall appear that he is detained in custody by virtue of a final judgment or decree of any competent court of criminal jurisdiction," implies that he may be discharged in other cases if it appears from the evidence that there is no ground for detaining him. The warrant of the committing magistrate and the bench warrants issued under the indictment are not final judgments, nor conclusive under the habeas corpus act. *Eureka Bank Cases*, 35 Nev. 81, 101 (126 P. 655; 129 P. 308).

6245. See *Eureka Bank Cases*, 35 Nev. 80, under section 6239.

6247. See *Eureka Bank Cases*, 35 Nev. 80, under section 6239.

6254. After an order in a habeas corpus proceeding discharging the prisoner a rehearing will not be granted, since this would suspend the former order and result in the rearrest of the prisoner, contrary to the express provisions of this section. *Eureka Bank Cases*, 35 Nev. 86, 151 (126 P. 655; 129 P. 308).

Sections 1, 2, 3, Stats. 1913, 300, repealed, Stats. 1915, 193.

Stats. 1915, 36, c. 35. Under this act, a signature to a will by having another aid or steady the hand of the testator, at his request, is valid, if the testator possessed testamentary capacity, was acting under no undue influence, and realized the force and effect of the provisions of the will he was signing. In *Re Gordon*, 40 Nev. 300, 303 (161 P. 717).

CRIMES AND PUNISHMENTS

6286. The words "gross misdemeanor" do not describe a particular or generic offense, but define simply a general class or grade of offense, determined by the limit fixed by law upon the punishment which may be imposed. *Ex Parte Booth*, 39 Nev. 193 (154 P. 933; L. R. A. 1916F, 960).

The penalty which a city may prescribe for violation of an ordinance being such that the offense under the definition of this section is a misdemeanor, the supreme court has no jurisdiction of an appeal from conviction thereof, its appellate jurisdiction in criminal cases being by Const. art. 6, sec. 4, limited to felony and it being immaterial that the case was transferred from the police court to the district court because the validity of the tax imposed by the ordinance was attacked; "cases at law" in which is involved the legality of a tax, of which the supreme court is given appellate jurisdiction, not including a criminal case. *City of Reno v. Dixon*, 42 Nev. 71 (172 P. 367, 368).

6275. Similar section (Cutting, 4665) cited, *State v. Mangana*, 33 Nev. 521, 522 (112 P. 693).

6291. Under this section and Rev. Laws, 6642, declaring that carnal knowledge of a female child under 16 is "rape," an indictment alleging that the accused attempted to

residents, the court shall not grant a divorce unless either party shall have been a bona-fide resident for not less than a year, provides for a classification of nonresidents at the time of the accrual of the cause of action for divorce, and the classification is reasonable, and does not conflict with the fourteenth amendment to the federal constitution guaranteeing the equal protection of the laws. *Id.*

The provisions of the act of February 20, 1913 (Stats. 1913, 10), amending section 22 of the marriage and divorce act of 1861 (Stats. 1861, 94), as amended by the act of February 15, 1875 (Stats. 1875, 63), by declaring that the court shall not grant divorce, unless either party shall have been a resident for not less than one year, relates merely to procedure, and not to the cause of action, and applies to cases where the cause of action accrued before the act took effect. *Id.*

The constitutional prohibition against the impairment of obligation of contracts does not apply to divorces, which are under the control of the legislature, and the provision of the above-mentioned act declaring that when, at the time a cause of divorce accrues, the parties are not both residents, the court cannot have jurisdiction, unless either party has been a bona-fide resident for not less than one year, does not impair the obligation of contracts, though it be construed as relating to a cause for divorce. *Id.*

Under this section, it was held that there was no necessary repugnancy between the provisions of the Revised Laws relating to residence and Stats. 1911, 318; the latter merely adding the requirement of physical presence to the former general requirement of the intention permanently to reside; so that the plaintiff, taking up her residence solely for the purpose of maintaining a divorce action, did not acquire such residence as was necessary to give the court jurisdiction of her suit. *Presson v. Presson*, 38 Nev. 203-206 (147 P. 1081).

Under this section as amended by Stats. 1915, 26, the complaint of a husband, not alleging his residence in the county, but merely that he is now therein, does not bring his status within the jurisdiction of the court, the matrimonial domicile of the parties being in another state, and the marital offenses complained of being such as might have been determined by the courts of the matrimonial domicile, though the complaint alleges that the defendant can be found in and is a resident of the county, the right of the wife to acquire another domicile separate from him, where their unity is dissolved, not availing him. *Aspinwall v. Aspinwall*, 40 Nev. 55, 59 (160 P. 253).

At common law, it was a well-founded rule that a woman on her marriage lost her own domicile and acquired that of her husband. *Merritt v. Merritt*, 40 Nev. 385, 389 (160 P. 22; 164 P. 644).

A wife may acquire and maintain a domicile separate from that of her husband. *Id.*

A complaint in divorce alleging plaintiff's residence in W. County, that defendant is within the jurisdiction of the court and can be served in W. County, gives the court jurisdiction under this section, giving jurisdiction if defendant can be found in the county. *Id.*

Evidence held sufficient to establish plaintiff's bona-fide residence within the state, though she admitted she was living at a hotel and owned no property within the state. *Id.*

When the husband gives up the domicile at one place and establishes another, and in good faith urges his wife to live with him there, her refusal to accept the invitation, if without sufficient reason, amounts to "desertion." *Roberson v. Roberson*, 41 Nev. 276, 281 (169 P. 333).

In a suit by husband, who was first guilty of desertion, for divorce on the ground of desertion of the wife, evidence held insufficient to show that the husband's invitation to the wife to come and live with him was made in good faith. *Id.*

Under this section, a district court has jurisdiction to grant divorce for extreme cruelty and desertion to a husband resident in the county for a year, though the acts complained of all occurred in another state, under whose statutes there was no cause of action for divorce on those grounds, since the law of the forum controls, it being the legislative intent that the district court have jurisdiction to determine the marriage status of parties whose residential qualifications meet the requirements of the statute, regardless of where the cause of action may have arisen; marriage, though a civil contract, constituting an exception to the rule of *lex loci contractus*. *Blakeslee v. Blakeslee*, 41 Nev. 235, 242 (168 P. 950).

In a suit to set aside a divorce decree, a complaint alleging that the decree was void,

of the action and for the support and maintenance of the wife or of the wife and of her child or children.

Power of court.

SEC. 3. In any such action the court may assign and decree to the wife the possession of any real or personal property of the husband and may order or decree the payment of a fixed sum of money for the support of the wife or for the support of the wife and of her child or children and provide that the payment of the same be secured upon real estate, or other security may be required, or any other suitable provision may be made; payments to be made at such times and in such manner as to the court may seem proper. And the court shall have power to change, modify or revoke its orders and decrees from time to time. No order or decree shall be effective beyond the joint lives of the husband and wife.

Husband may be enjoined.

SEC. 4. At any time after the filing of the complaint the wife may file a notice of pendency of the action in the office of the county recorder of any county in which the husband may have real property, which shall have the same effect as such notice in actions directly affecting real property. The court may also enjoin the husband from disposing of any property during the pendency of the action.

Preliminary and final orders.

SEC. 5. The court in such actions may make such preliminary and final orders as it may deem proper for the custody, control and support of any minor child or children of the parties.

Orders may be enforced—Receiver, when.

SEC. 6. The final judgment and any order or orders made before or after judgment may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary; a receiver may be appointed, security may be required, execution may issue, under which real or personal property of the husband may be sold as under execution in other cases, and disobedience of any order or orders may be punished as a contempt.

Procedure same as for divorce.

SEC. 7. In all cases commenced hereunder, the proceedings and practice shall be the same, as nearly as may be, as is now or hereafter may be provided in actions for divorce; and suit may be brought, at the option of the wife, either in the county in which the wife shall reside, at the time the suit is commenced, or in the county in which the husband may be found.

5894. Who entitled to letters of administration—Precedence.

SEC. 38. Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

First—The surviving husband or wife, or such person as he or she may request to have appointed.

Second—The children.

Third—The father, or the mother.

Fourth—The brother.

Fifth—The sister.

Sixth—The grandchildren.

Seventh—Any other of the kindred entitled to share in the distribution of the estate.

Eighth—The creditors.

Ninth—The public administrator.

Tenth—Any of the kindred not above enumerated, within the fourth degree of consanguinity.

Eleventh—Any person or persons legally competent. *As amended, Stats. 1913, 28; 1917, 355.*

5910. Executor and administrator to take oath—Form of—Filed and recorded—Certified copies of records and papers have force of originals.

SEC. 54. Before letters testamentary or of administration shall be issued to the executor or administrator he shall take and subscribe an oath or affirmation before an officer authorized to administer oaths that he will perform, according to law, the duties of executor or administrator; said oath shall be filed and recorded by the clerk. All duly certified copies of any record or paper in matters of estates shall have the same force and effect in all cases whatsoever as the original papers would have. *As amended, Stats. 1919, 31.*

5911. Under this section, the relationship of trustees and cestui que trust between the executor and administrators and the heirs is not created in so far as the same might apply to the realty of an estate, so that the rule that a statute of limitations running against a trustee holding the legal title to realty runs also against cestui does not apply. *Wren v. Dixon, 40 Nev. 172, 213 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).*

5943. Appraisement, how made—Compensation of appraisers limited—Inventory, what to include.

SEC. 87. For the purpose of making the appraisement, the court or judge shall appoint not more than three disinterested persons who shall be entitled to a reasonable compensation for their services, to be allowed by the court. This compensation as allowed shall be in the form of a bill of items for their services, including all necessary disbursements, which shall be sworn to by them, and filed at the same time as the inventory. The compensation shall not exceed five dollars per day each, and may be paid out of the estate at any time. The inventory shall include all the estate of the deceased wherever situated; *provided*, that where any estate consists of money, deposits in banks, bonds, policies of life insurance or securities for money or evidence of indebtedness, when the same is equal in value to money, the court or judge shall not appoint appraisers, but shall record the value of the same in the minutes of the court. *As amended, Stats. 1919, 54.*

5960. Under the statutory provisions and procedure relative to the estates of decedents the title to real estate vests in the heirs and devisees at the moment of the death of the testator or intestate, subject only to the right of possession of the executor or administrator under this section, for the payment of the debts and expenses of administration, with the right in the administrator to possession until the estate is settled or delivered over to the parties entitled by the order of the probate court. *Wren v. Dixon, 40 Nev. 172, 208 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).*

5957. Under Stats. 1897, 119, similar to this section, construed with other statutes, it was held that a widow cannot have set aside to her as a homestead land which was her husband's separate property at his death, and had not been declared on as a homestead; there being other heirs. *In Re Cook's Estate, 34 Nev. 218, 235, 238 (117 P. 27).*

5958. Cited, *Guisti v. Guisti, 41 Nev. 355 (171 P. 161).*

5963. Under this section and Rev. Laws, 5964, 5967, and 6041, as to the duties of an administrator, expedient administration is required, and where an estate had cash on hand to meet all indebtedness, and everything was present to facilitate a speedy discharge of the trust, but the administrator permitted the estate to drag on for nearly seven years without an accounting and without any attempt to secure an order for expenditure of money, he was guilty of a breach of his duties. *In Re Delaney's Estate, 41 Nev. 384, 400 (171 P. 383; L. R. A. 1918D, 1022).*

5964. See *In Re Delaney's Estate*, 41 Nev. 384, under section 5963.

A claim which is to be paid at a future date, and is so contingent that it is uncertain whether or not any demand will accrue, is not such a claim as is required to be filed within three months after the date of the first publication of notice to creditors under this section. *Pruett v. Caddigan*, 42 Nev. 329, 333, 334 (176 P. 788).

5965. This section contemplates that offsets in favor of the decedent and known to the claimant be credited upon the claim. *Hibbard v. Clark*, 39 Nev. 230, 233 (156 P. 447).

In a complaint on a rejected claim against decedent's estate, the facts constituting an offset or counterclaim in favor of the estate must be alleged; the general rule of pleading that a complaint need not allege facts constituting an offset or counterclaim being inapplicable by reason of the provisions of this section which contemplates the credit of offsets upon such claims. *Id.*

5967. See *In Re Delaney's Estate*, 41 Nev. 384, under section 5963.

5972. The judicial power, authority and duty of the United States district court is wholly independent of state action and cannot directly or indirectly be destroyed, abridged, limited or rendered less efficacious by any state statutes or by any state authority whatever, so that this section and sections 5974 and 5975 could not confer on the district courts of the state a practically exclusive jurisdiction over the property owing deceased party defendant in possession of the United States district court by its receiver and in course of distribution to judgment and other creditors. *Johnson v. Johnson*, 225 F. 414, 416.

5974. See *Johnson v. Johnson*, 225 F. 414, under section 5972.

5975. See *Johnson v. Johnson*, 225 F. 414, under section 5972.

An Act authorizing the sale, lease or option of mines, mining claims or mining property owned or held by estates, and providing for the conveyance thereof.

Approved February 12, 1917, 15

Sale or lease of mining claims or mining property.

SECTION 1. When all or any portion of the estate of any deceased person, or of any ward under guardianship, consists of mines, mining claims or mining property, whether patented or unpatented, or of interests in mines, mining claims, and mining property, the administrator or executor of the estate of such deceased person, or the guardian of the property of the ward, may petition the court having jurisdiction of the estate for leave to lease such mines, mining claims, or mining property, or such interests in mines, mining claims or other mining property, belonging to the estate of the deceased, or to the ward, with an option to the lessee to purchase the same; and if upon the hearing it appears to the satisfaction of the court that it is for the best interest of the estate or of the ward, the court may make an order authorizing the administrator, executor or guardian to lease all or any portion of such mines, mining claims or other mining property, or all, or any portion, of the interests therein belonging to the estate or to the ward, as he shall designate in the order, and to give an option to the lessee to purchase the same within a specified time at a stipulated price; and when such order has been made, the executor, administrator, or guardian may lease the property or the interests in the property specified in said order, and give the lessee an option to purchase the same within the time, at the price, and on the terms specified in the order.

When deed may be executed.

SEC. 2. If the lessee complies with the terms of the lease and accepts the option and tenders the stipulated price, he shall be entitled to a deed to be executed and delivered by the administrator, executor or guardian in the name of the interested heirs or wards for the mines, mining claims or other mining property, or the aforesaid interest therein upon which the option

was given, and title shall pass upon execution and delivery of such deed acknowledging payment of such price without further order by the court.
[This act supplemental to Rev. Laws, 5980.]

6018. Cited, *Guisti v. Guisti*, 41 Nev. 355 (171 P. 161).

6022. Under *Cutting*, 2951, similar to this, an action for damages caused by wrongful ejection of a passenger from a train, where the passenger had paid his fare and received a ticket, is a transitory action upon a contract which may be continued by the administratrix of the plaintiff after his death. *Forrester v. Southern Pacific Company*, 36 Nev. 247, 265 (134 P. 753; 48 L. R. A. (N.S.) 1).

6041. See *In Re Delaney's Estate*, 41 Nev. 384, under section 5963.

6052. It is within the power of the state to determine the order in which debts of an estate shall be paid; therefore federal courts must give effect to this section declaring priorities. *Johnson v. Garner*, 233 F. 758, 767, 769.

Under this section it was held that, as the term "debt," used in the statute, signifies no more than a sum of money owing on a contract, express or implied, only the profits of the community estate converted by the husband can be deemed debts, but the husband must be treated as trustee of the wife's interest in the community property, and as to such she takes priority over creditors who reduced their debts to judgment during the husband's lifetime, while as to the debt for the profits withheld she does not. *Id.*

6057. The obligation of a surety on a guardian's bond, being a subsisting one, is not a "contingent claim" referred to in this section, providing for the payment into court of amount that would be payable if the whole were established as absolute. *Pruett v. Caddigan*, 42 Nev. 329, 335, 336 (176 P. 787).

6089. It cannot be said that Rev. Laws, 5329, was intended to cover the whole subject as to appeals so as to make it operate to repeal all other statutes on the subject including Rev. Laws, 4833; Rev. Laws, 4564, this section and Rev. Laws, 6112 and 6113, providing for appeals and certain other orders. *State ex rel. Pacific Reclamation Co. v. Duckert*, 35 Nev. 214, 223 (127 P. 990).

6112. See *State ex rel. Pacific Reclamation Co. v. Duckert*, 35 Nev. 214, under section 6089.

Where a petition is presented in the district court for removal of an administrator, setting up his alleged wrongful acts, and, after hearing both petitioner and respondent, decision was rendered dismissing the petition, such action was not reviewable by mandamus since the court exercised jurisdiction and discretion in hearing and deciding the case and petitioner had a plain, speedy and adequate remedy at law by appeal from such decision under this section. *State ex rel. Freyesleben v. District Court*, 40 Nev. 163, 169 (161 P. 510).

6116. Descent and distribution—When to escheat.

SEC. 259. When any person having title to any estate, not otherwise limited by marriage contract, shall die intestate as to such estate, it shall descend and be distributed, subject to the payment of his or her debts, in the following manner:

First—If there be a surviving husband or wife, and only one child, or the lawful issue of one child, one-half to the surviving husband or wife, and one-half to such child or issue of such child. If there be a surviving husband or wife and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his or her children, and to the lawful issue of any deceased child by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants, and if all of the said descendants are in the same degree of kindred to the intestate they shall share equally, otherwise they shall take according to the right of representation.

Second—If he or she shall leave no issue, the estate shall go, one-half to

the surviving husband or wife, one-fourth to the intestate's father, and one-fourth to the intestate's mother, if both are living; if not, one-half to either the father or mother then living. If he or she shall leave no issue, nor father, nor mother, the whole community property of the intestate shall go to the surviving husband or wife, and one-half of the separate property of the intestate shall go to the surviving husband or wife, and the other half thereof shall go in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation. If he or she shall leave no issue, or husband, or wife, the estate shall go, one-half to the intestate's father and one-half to the intestate's mother, if both are living; if not, the whole estate shall go to either the father or mother then living. If he or she shall leave no issue, father, mother, brother, or sister, or children of any issue, brother or sister, all of the property, both community and separate, of the intestate shall go to the surviving husband or wife.

Third—If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation.

Fourth—If the intestate shall leave no issue, nor husband, nor wife, nor father, nor mother, and no brother or sister living at his or her death, the estate shall go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those who claim through ancestors more remote; *provided, however*, if any person shall die leaving several children, or leaving one child and issue of one or more children, and any such surviving child shall die under age and not having been married, all of the estate that came to such deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who may have died, by right of representation.

Fifth—If at the death of such child, who shall die under age and not having been married, all the other children of this said parent being also dead, and any of them shall have left issue; the estate that came to such child by inheritance from his or her said parent shall descend to all the issue of the other children of the same parent, and if all the said issue are in the same degree of kindred to said child they shall share the said estate equally; otherwise they shall take according to the right of representation.

Sixth—If there be no surviving husband, or wife, or kindred, except a child or children, the estate shall, if there be only one child, all go to that child; and if there be more than one child, the estate shall descend and be distributed to all the intestate's children, share and share alike.

Seventh—If there be no surviving husband, or wife, or kindred, except a child or children and the lawful issue of a child or children, the estate shall descend and be distributed to such child or children and lawful issue of such child or children by right of representation, as follows: To such child or children each a child's part, and to the lawful issue of each deceased child, by right of representation, the same part and proportion that its parent would have received in case such parent had been living at the time of the intestate's death; that is, the lawful issue of any deceased child shall receive the part and proportion that its parent would have received had such parent been living at the time of the intestate's death.

Eighth—If there be no surviving husband, or wife, or kindred, except the lawful issue of a child or children, all of the estate shall descend and be distributed to the lawful issue of such child or children by right of representation, and this rule shall apply to the lawful issue of all such children and to their lawful issue ad infinitum.

Ninth—If the intestate shall leave no husband, nor wife, nor kindred, the estate shall escheat to the state for the support of the common schools. *As amended, Stats. 1899, 113; 1901, 44; 1903, 218; 1913, 56; 1915, 149; 1917, 37.*

Cited, *Winters v. Winters*, 34 Nev. 331 (123 P. 17, 1135).

Similar statutes, 1897, 158; 1899, 110; 1901, 44; 1903, 218; 1915, 149; cited, In *Re Kattenhorn's Estate*, 41 Nev. 379, 380, 383 (171 P. 164).

6131. Idem—Duty of attorney-general—To file information—Citation to issue.

SEC. 274. Whenever the attorney-general shall be informed, or shall have reason to believe, that any real or personal estate has become escheatable to this state for the reasons specified in the preceding section, or that any such estate has for any other reason become escheatable, it shall be his duty to file an information in behalf of the state in the district court of the county wherein such estate, or any part thereof, is situated, setting forth a description of the estate, the name of the person last lawfully seized, the name of the terre-tenant and persons claiming such estate, if known, and the facts and circumstances in consequence of which said estate is claimed to have become escheated, and alleging that by reason thereof the State of Nevada has by law right to such estate; whereupon, such court shall order that a citation be issued to such person or persons, bodies politic, or corporate, alleged in such information to hold, possess or claim such estate, requiring them to appear and show cause why such estate should not be vested in the State of Nevada, said citation to be made returnable within the time allowed by law in other civil actions. The court may also, if deemed advisable, order the citation to be published in a newspaper published in said county (if any) and, if none, then in some other newspaper in this state; *provided, however*, that when the residue remaining of any estate mentioned in the preceding section, after the payment of the costs and expenses of administration and creditors' claims, and other expenses, does not exceed the sum or value of five hundred dollars, the proceedings hereinbefore specified for the escheating of such estate to the State of Nevada shall be dispensed with, and the administrator of such estate, or other legal representative of the deceased, shall, on the order of the court, pay over or deliver such residue to the county treasurer of the county wherein said estate is being probated or is situated, for the benefit of the State of Nevada, and the receipt or certificate of said county treasurer, evidencing such payment or delivery, shall be filed with the clerk of the district court of the county wherein such estate is being probated or is situated, and upon such filing said administrator, or other legal representative of the deceased, shall be released and discharged from all further liability as to such residue, and upon such payment or delivery to him said county treasurer shall notify the attorney-general of the State of Nevada of the same, and shall pay over or deliver such residue to the state treasurer of the State of Nevada, taking his receipt or certificate therefor, and such payment or delivery shall be subject to all of the provisions of this act concerning the recovery of the same from this state by any person or persons found to be entitled thereto. *As amended, Stats. 1919, 34.*

6133. See *State ex rel. Pacific Reclamation Co. v. Ducker*, 35 Nev. 223, under section 6089.

6149. This act cited, *O'Donnell v. District Court*, 40 Nev. 432 (165 P. 759).

6153. Idem—Father and mother legal guardian.

SEC. 5. The father and mother, being each competent to transact his or her own business, and not otherwise unsuitable, shall be entitled to the

guardianship of the minor. If either the father or mother be dead or be unable or refuse to take the custody of the minor, or has abandoned his or her family, the other is entitled thereto. *As amended, Stats. 1913, 27.*

6154. Idem—Powers and duties of guardian—Lawful age.

SEC. 6. The guardian or guardians appointed as aforesaid shall have the custody and tuition of the minor, and the care and management of the estate, of which appointed, including the earnings of said minor, until such minor shall attain the age of twenty-one years, if a male, or eighteen years, if a female, unless sooner discharged according to law. *As amended, Stats. 1913, 27.*

6155. Idem—Bond to be given—Sureties—Condition of bond—Letters of guardianship, form of—No bond, when.

SEC. 7. Before the order appointing any person guardian under this act shall take effect, and before letters shall issue, the person or persons so appointed shall take and subscribe the official oath, to be endorsed on the letters, and shall give bond to the minor or minors in such sum as the court may order, with at least two sufficient sureties to be approved by the court or judge, and conditioned that the guardian shall faithfully execute the duties of his or her trust according to law; and the following conditions shall be deemed to form a part of such bond without being expressed therein:

First—To make a full and true inventory of all the estate, real and personal, of the ward, and have the same appraised by three disinterested persons, to be appointed by the court or judge, and to return and file in the clerk's office within twenty days after qualifying such inventory and appraisement under oath.

Second—To manage all such estate according to law and for the best interest of the ward, and to discharge faithfully his or her trust in relation thereto, and also in relation to the care, custody, and education of the ward.

Third—To render under oath a true account of the property, estate and moneys of the ward, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within one year after appointment, and annually thereafter, and at such other time as the court may direct.

Fourth—At the expiration of his trust, to settle his or her final account with the court or with the ward if of legal age, or his or her legal representative, and to pay over all moneys, and deliver all the estate and effects remaining in his or her hands or justly chargeable to the guardian on such settlement, to the person or persons lawfully entitled thereto.

Upon filing such bonds, duly approved by the district judge, and taking the oath of office as aforesaid, the clerk shall issue letters of guardianship to the person or persons appointed. Letters of guardianship may be substantially in the following form: (After properly entitling court and cause.)

WHEREAS, By order of said court herein made and entered on the..... day of....., I,....., was (or were, as the case may be) appointed guardian of the (person and estate, or either, as the case may be) of....., minor; and, whereas, the said..... has (or have, as the case may be) duly qualified according to law, these letters are hereby issued to....., as such guardian. Witness my hand and the seal of said court, this..... day of.....

....., Clerk.

Provided, If a person is appointed in a will to be guardian without bonds, the court may direct letters to issue to such on taking and subscribing the oath of office.

Provided further, That if there are no assets of said ward no bonds shall be required of the guardian.

Provided further, That where any estate consists of money, bonds, bank deposits, policies of life insurance, or securities for money, or evidence of indebtedness, when the same is equal to money, the court or judge shall not appoint any appraisers, but shall record the value of the same in the order appointing the guardian. *As amended, Stats. 1919, 73.*

6161. Guardian pendente lite—Next friend may sue or defend for.

SEC. 13. Nothing contained in this act shall affect or impair the power of the court to appoint a guardian to defend the interest of any minor, in any suit or matter pending therein, or to appoint or allow any person as the next friend of a minor to commence and prosecute any suit in behalf of a minor. *As amended, Stats. 1913, 27.*

6162. Held, that the procedure provided in this section is equitable, and the judgment appointing the guardian for a mentally enfeebled person is final so that an appeal lies. *O'Donnell v. District Court*, 40 Nev. 428, 432-434 (165 P. 759).

6165. Where a guardian of an infant gave a mortgage upon the common property of the infant and the guardian, in order to pay off a mortgage about to be foreclosed, such mortgage was not valid; there being at the time no statute conferring on the court the power to allow the guardian to execute such mortgage. *Lafranchini v. Clark*, 39 Nev. 48, 52 (153 P. 250).

6202-6222. Cited, *In Re Estate of Lewis*, 39 Nev. 450, 451 (159 P. 961).

6204. Requisites of a valid will—Holographic, exception.

SEC. 3. No will, executed in this state, except such nuncupative wills as are mentioned in this act, and except such holographic wills as are mentioned in an act entitled "An act relating to holographic wills," approved March 20, 1895, shall be valid, unless it be in writing, and signed by the testator, or by some person in his presence, and by his express direction, and attested by at least two competent witnesses, subscribing their names to the will in the presence of the testator. *As amended, Stats. 1915, 36.*

6205. Under Rev. Laws, 6219, this section, and Rev. Laws, 6620, it was held in the absence of an interchangeable or indiscriminate use of such terms in the statute, the words "devisee" and "devise" are not to be given the scope of "legatee" and "legacy," and do not comprehend the disposition of personal property; so that, where a will gave and bequeathed the residue of all property of testatrix to a relative and her daughter and the devisee predeceased the testatrix, the daughter was entitled to all the residue of the realty, and to one-half the residue of the personal property, but as to the other half of the residue of the personal property, the testatrix died intestate. *In Re Estate of Lewis*, 39 Nev. 445, 452 (159 P. 961).

6219. See *In Re Estate of Lewis*, 39 Nev. 445, under section 6205.

6220. See *In Re Estate of Lewis*, 39 Nev. 445, under section 6205.

An Act relative to wills executed without this state, and to promote uniformity among the states in that respect.

Approved February 26, 1915, 36

When wills deemed legally executed.

SECTION 1. A last will and testament, executed without this state in the mode prescribed by the law, either of the state where executed, or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the law of this state; *provided*, said last will and testament is in writing and subscribed by the testator.

Uniformity of laws.

SEC. 2. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

6239. Under the clear provisions of the habeas corpus act (Rev. Laws, 6239, 6241; 6242, 6243, 6245) the warrant of a committing magistrate and the bench warrant under an indictment are not final judgments, nor conclusive, and the judge or court hearing an application for a writ of habeas corpus may take or hear evidence against the warrants and indictment, and may discharge the accused when the magistrate, grand jury, or court have exceeded their jurisdiction, when the process has been issued in a case not allowed by law, or when the party has been committed on a criminal charge without reasonable or probable cause. *Eureka Bank Cases*, 35 Nev. 80, 100 (126 P. 655; 129 P. 308).

6240. See *Eureka Bank Cases*, 35 Nev. 80, under section 6239.

6242. See *Eureka Bank Cases*, 35 Nev. 80, under section 6239.

6243. See *Eureka Bank Cases*, 35 Nev. 80, under section 6239.

6244. The provision in this section, that it shall be the duty of the "judge to remand the party if it shall appear that he is detained in custody by virtue of a final judgment or decree of any competent court of criminal jurisdiction," implies that he may be discharged in other cases if it appears from the evidence that there is no ground for detaining him. The warrant of the committing magistrate and the bench warrants issued under the indictment are not final judgments, nor conclusive under the habeas corpus act. *Eureka Bank Cases*, 35 Nev. 81, 101 (126 P. 655; 129 P. 308).

6245. See *Eureka Bank Cases*, 35 Nev. 80, under section 6239.

6247. See *Eureka Bank Cases*, 35 Nev. 80, under section 6239.

6254. After an order in a habeas corpus proceeding discharging the prisoner a rehearing will not be granted, since this would suspend the former order and result in the rearrest of the prisoner, contrary to the express provisions of this section. *Eureka Bank Cases*, 35 Nev. 86, 151 (126 P. 655; 129 P. 308).

Sections 1, 2, 3, Stats. 1913, 300, repealed, Stats. 1915, 193.

Stats. 1915, 36, c. 35. Under this act, a signature to a will by having another aid or steady the hand of the testator, at his request, is valid, if the testator possessed testamentary capacity, was acting under no undue influence, and realized the force and effect of the provisions of the will he was signing. *In Re Gordon*, 40 Nev. 300, 303 (161 P. 717).

CRIMES AND PUNISHMENTS

6266. The words "gross misdemeanor" do not describe a particular or generic offense, but define simply a general class or grade of offense, determined by the limit fixed by law upon the punishment which may be imposed. *Ex Parte Booth*, 39 Nev. 193 (154 P. 933; L. R. A. 1916F, 960).

The penalty which a city may prescribe for violation of an ordinance being such that the offense under the definition of this section is a misdemeanor, the supreme court has no jurisdiction of an appeal from conviction thereof, its appellate jurisdiction in criminal cases being by Const. art. 6, sec. 4, limited to felony and it being immaterial that the case was transferred from the police court to the district court because the validity of the tax imposed by the ordinance was attacked; "cases at law" in which is involved the legality of a tax, of which the supreme court is given appellate jurisdiction, not including a criminal case. *City of Reno v. Dixon*, 42 Nev. 71 (172 P. 367, 368).

6275. Similar section (Cutting, 4665) cited, *State v. Mangana*, 33 Nev. 521, 522 (112 P. 693).

6291. Under this section and Rev. Laws, 6642, declaring that carnal knowledge of a female child under 16 is "rape," an indictment alleging that the accused attempted to

cernally know a female child of 13 by procuring her to get in bed with him and soliciting her to have intercourse with him with intent to rape is sufficient to charge an attempt to rape. *State v. Pierpoint*, 38 Nev. 173, 174 (147 P. 214).

An act done with intent to commit a crime, and tending, but failing, to accomplish it, is an attempt to commit that crime (citing 1 Words and Phrases, "Attempt to Commit Crime"). *State v. Huber*, 38 Nev. 253, 267 (148 P. 562).

6294. Cited, *State v. Salgado*, 38 Nev. 89 (145 P. 919; 150 P. 764).

Cited, *State v. Salgado*, 38 Nev. 423 (150 P. 764).

Subd. 10. Definition of "real property" cited, *Vineyard Land and Stock Co. v. District Court*, 42 Nev. 41 (171 P. 177).

An Act defining criminal syndicalism, and providing a punishment therefor.

Approved February 27, 1919, 33

Criminal syndicalism defined.

SECTION 1. Criminal syndicalism is the doctrine which advocates or teaches crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform. The advocacy or teaching of such doctrine, whether by word of mouth or writing, is a felony punishable as in this act otherwise provided.

Certain acts declared felonies—Penalty.

SEC. 2. Any person who—

(1) By word of mouth or writing, advocates or teaches the duty, necessity or propriety of crime, sabotage, violence or other unlawful methods of terrorism as a means of accomplishing industrial or political reform; or

(2) Prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document, or written matter in any form, containing or advocating, advising or teaching the doctrine that industrial or political reform should be brought about by crime, sabotage, violence or other unlawful methods of terrorism; or

(3) Openly, wilfully and deliberately justifies, by word of mouth or writing, the commission or the attempt to commit crime, sabotage, violence, or other unlawful methods of terrorism with intent to exemplify, spread, or advocate the propriety of the doctrine of criminal syndicalism; or

(4) Organizes or helps to organize or becomes a member of, or voluntarily assembles with, any society, group, or assemblage of persons formed to teach or advocate the doctrine of criminal syndicalism;

Is guilty of a felony and punishable by imprisonment in the state prison for not more than ten years or by a fine of not more than \$5,000, or both.

Certain assemblages prohibited—Penalties.

SEC. 3. Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal syndicalism as defined in this act, such an assemblage is unlawful, and every person voluntarily participating therein by his presence, aid, or instigation is guilty of a felony and punishable by imprisonment in the state prison for not more than ten years or by a fine of not more than \$5,000, or both.

Keepers of buildings culpable, when—Penalty.

SEC. 4. The owner, agent, superintendent, janitor, caretaker, or occupant of any place, building, or room, who wilfully and knowingly permits therein any assemblage of persons prohibited by the provisions of section three of this act, or who, after the notification that the premises are so used, permits such use to be continued, is guilty of a misdemeanor and punishable by imprisonment in the county jail for not more than one year or by a fine of not more than \$500, or both.

of the action and for the support and maintenance of the wife or of the wife and of her child or children.

Power of court.

SEC. 3. In any such action the court may assign and decree to the wife the possession of any real or personal property of the husband and may order or decree the payment of a fixed sum of money for the support of the wife or for the support of the wife and of her child or children and provide that the payment of the same be secured upon real estate, or other security may be required, or any other suitable provision may be made; payments to be made at such times and in such manner as to the court may seem proper. And the court shall have power to change, modify or revoke its orders and decrees from time to time. No order or decree shall be effective beyond the joint lives of the husband and wife.

Husband may be enjoined.

SEC. 4. At any time after the filing of the complaint the wife may file a notice of pendency of the action in the office of the county recorder of any county in which the husband may have real property, which shall have the same effect as such notice in actions directly affecting real property. The court may also enjoin the husband from disposing of any property during the pendency of the action.

Preliminary and final orders.

SEC. 5. The court in such actions may make such preliminary and final orders as it may deem proper for the custody, control and support of any minor child or children of the parties.

Orders may be enforced—Receiver, when.

SEC. 6. The final judgment and any order or orders made before or after judgment may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary; a receiver may be appointed, security may be required, execution may issue, under which real or personal property of the husband may be sold as under execution in other cases, and disobedience of any order or orders may be punished as a contempt.

Procedure same as for divorce.

SEC. 7. In all cases commenced hereunder, the proceedings and practice shall be the same, as nearly as may be, as is now or hereafter may be provided in actions for divorce; and suit may be brought, at the option of the wife, either in the county in which the wife shall reside, at the time the suit is commenced, or in the county in which the husband may be found.

5894. Who entitled to letters of administration—Precedence.

SEC. 38. Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

First—The surviving husband or wife, or such person as he or she may request to have appointed.

Second—The children.

Third—The father, or the mother.

Fourth—The brother.

Fifth—The sister.

Sixth—The grandchildren.

Seventh—Any other of the kindred entitled to share in the distribution of the estate.

Eighth—The creditors.

Ninth—The public administrator.

Tenth—Any of the kindred not above enumerated, within the fourth degree of consanguinity.

Eleventh—Any person or persons legally competent. *As amended, Stats. 1913, 28; 1917, 355.*

5910. Executor and administrator to take oath—Form of—Filed and recorded—Certified copies of records and papers have force of originals.

SEC. 54. Before letters testamentary or of administration shall be issued to the executor or administrator he shall take and subscribe an oath or affirmation before an officer authorized to administer oaths that he will perform, according to law, the duties of executor or administrator; said oath shall be filed and recorded by the clerk. All duly certified copies of any record or paper in matters of estates shall have the same force and effect in all cases whatsoever as the original papers would have. *As amended, Stats. 1919, 31.*

5911. Under this section, the relationship of trustees and cestui que trust between the executor and administrators and the heirs is not created in so far as the same might apply to the realty of an estate, so that the rule that a statute of limitations running against a trustee holding the legal title to realty runs also against cestui does not apply. *Wren v. Dixon, 40 Nev. 172, 213 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).*

5943. Appraisement, how made—Compensation of appraisers limited—Inventory, what to include.

SEC. 87. For the purpose of making the appraisement, the court or judge shall appoint not more than three disinterested persons who shall be entitled to a reasonable compensation for their services, to be allowed by the court. This compensation as allowed shall be in the form of a bill of items for their services, including all necessary disbursements, which shall be sworn to by them, and filed at the same time as the inventory. The compensation shall not exceed five dollars per day each, and may be paid out of the estate at any time. The inventory shall include all the estate of the deceased wherever situated; *provided*, that where any estate consists of money, deposits in banks, bonds, policies of life insurance or securities for money or evidence of indebtedness, when the same is equal in value to money, the court or judge shall not appoint appraisers, but shall record the value of the same in the minutes of the court. *As amended, Stats. 1919, 54.*

5950. Under the statutory provisions and procedure relative to the estates of decedents the title to real estate vests in the heirs and devisees at the moment of the death of the testator or intestate, subject only to the right of possession of the executor or administrator under this section, for the payment of the debts and expenses of administration, with the right in the administrator to possession until the estate is settled or delivered over to the parties entitled by the order of the probate court. *Wren v. Dixon, 40 Nev. 172, 208 (161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064).*

5957. Under Stats. 1897, 119, similar to this section, construed with other statutes, it was held that a widow cannot have set aside to her as a homestead land which was her husband's separate property at his death, and had not been declared on as a homestead; there being other heirs. *In Re Cook's Estate, 34 Nev. 218, 235, 238 (117 P. 27).*

5958. Cited, *Guisti v. Guisti, 41 Nev. 355 (171 P. 161).*

5963. Under this section and Rev. Laws, 5964, 5967, and 6041, as to the duties of an administrator, expedient administration is required, and where an estate had cash on hand to meet all indebtedness, and everything was present to facilitate a speedy discharge of the trust, but the administrator permitted the estate to drag on for nearly seven years without an accounting and without any attempt to secure an order for expenditure of money, he was guilty of a breach of his duties. *In Re Delaney's Estate, 41 Nev. 384, 400 (171 P. 383; L. R. A. 1918D, 1022).*

of the action and for the support and maintenance of the wife or of the wife and of her child or children.

Power of court.

SEC. 3. In any such action the court may assign and decree to the wife the possession of any real or personal property of the husband and may order or decree the payment of a fixed sum of money for the support of the wife or for the support of the wife and of her child or children and provide that the payment of the same be secured upon real estate, or other security may be required, or any other suitable provision may be made; payments to be made at such times and in such manner as to the court may seem proper. And the court shall have power to change, modify or revoke its orders and decrees from time to time. No order or decree shall be effective beyond the joint lives of the husband and wife.

Husband may be enjoined.

SEC. 4. At any time after the filing of the complaint the wife may file a notice of pendency of the action in the office of the county recorder of any county in which the husband may have real property, which shall have the same effect as such notice in actions directly affecting real property. The court may also enjoin the husband from disposing of any property during the pendency of the action.

Preliminary and final orders.

SEC. 5. The court in such actions may make such preliminary and final orders as it may deem proper for the custody, control and support of any minor child or children of the parties.

Orders may be enforced—Receiver, when.

SEC. 6. The final judgment and any order or orders made before or after judgment may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary; a receiver may be appointed, security may be required, execution may issue, under which real or personal property of the husband may be sold as under execution in other cases, and disobedience of any order or orders may be punished as a contempt.

Procedure same as for divorce.

SEC. 7. In all cases commenced hereunder, the proceedings and practice shall be the same, as nearly as may be, as is now or hereafter may be provided in actions for divorce; and suit may be brought, at the option of the wife, either in the county in which the wife shall reside, at the time the suit is commenced, or in the county in which the husband may be found.

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authority, or having legal charge, shall take, place, harbor, inveigle, entice, persuade, encourage or procure any female person to enter any place within this state in which prostitution is practiced, encouraged or allowed, for the purpose of prostitution, or any person who shall, by promises, threats, violence, or by any device or scheme, by fraud or artifice, by duress of person or goods, or abuse of any position of confidence or authority or having legal charge, take, place, harbor, inveigle, entice, persuade, encourage or procure any female person of previous chaste character to enter any place within this state in which prostitution is practiced, encouraged or allowed for the purpose of sexual intercourse, or who takes or detains a female with the intent to compel her by force, threats, menace or duress to marry him or to marry any other person, or who shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any female person to become a prostitute or to come into this state or leave this state for the purpose of prostitution, or, being her husband, for the purpose of sexual intercourse, shall be guilty of pandering, and upon conviction, shall be punished by imprisonment in the state prison for a term of not less than two nor more than twenty years.

Placing wife in brothel, pandering—Felony.

SEC. 2. Any person who, by force, fraud, intimidation or threats, places or procures any other person or persons to place, his wife in a house of prostitution or lead a life of prostitution shall be guilty of pandering and upon conviction thereof shall be sentenced to the state prison for not less than two nor more than twenty years. Upon the trial of any offense mentioned in this section a wife shall be a competent witness for or against her husband, with or without his consent, and may be compelled so to testify.

Living off earnings of prostitute, felony.

SEC. 3. Any person who shall knowingly accept, receive, levy or appropriate any money or other valuable thing, without consideration, from the proceeds of any women engaged in prostitution, shall be guilty of pandering, and on conviction thereof shall be punished by imprisonment for a period not less than two nor more than twenty years. Any such acceptance, receipt, levy or appropriation of such money or valuable thing, shall, upon any proceedings or trial for violation of this section, be presumptive evidence of lack of consideration.

Detaining female in brothel because of debt, felony.

SEC. 4. Any person or persons who attempt to detain any female person in a disorderly house or house of prostitution because of any debt or debts she has contracted, or is said to have contracted, while living in said house, shall be guilty of pandering and upon conviction thereof shall be sentenced to the state prison for not less than two nor more than twenty years.

Furnishing transportation illicitly, felony—Jurisdiction.

SEC. 5. Any person who shall knowingly transport or cause to be transported, by any means of conveyance, into, through or across this state, or who shall aid or assist in obtaining such transportation for, any female person, with the intent and purpose to induce, entice, or compel such female person to become a prostitute, shall be deemed guilty of pandering, and upon conviction thereof shall be sentenced to the penitentiary for not less than two nor more than twenty years. Any person who may commit the crime in this section mentioned may be prosecuted, indicted, tried and convicted in any county or city in or through which he shall so transport or attempt to transport any female person, as aforesaid.

was given, and title shall pass upon execution and delivery of such deed acknowledging payment of such price without further order by the court.
[This act supplemental to Rev. Laws, 5980.]

6018. Cited, *Guisti v. Guisti*, 41 Nev. 355 (171 P. 161).

6022. Under *Cutting*, 2951, similar to this, an action for damages caused by wrongful ejection of a passenger from a train, where the passenger had paid his fare and received a ticket, is a transitory action upon a contract which may be continued by the administratrix of the plaintiff after his death. *Forrester v. Southern Pacific Company*, 36 Nev. 247, 265 (134 P. 753; 48 L. R. A. (N.S.) 1).

6041. See *In Re Delaney's Estate*, 41 Nev. 384, under section 5963.

6052. It is within the power of the state to determine the order in which debts of an estate shall be paid; therefore federal courts must give effect to this section declaring priorities. *Johnson v. Garner*, 233 F. 758, 767, 769.

Under this section it was held that, as the term "debt," used in the statute, signifies no more than a sum of money owing on a contract, express or implied, only the profits of the community estate converted by the husband can be deemed debts, but the husband must be treated as trustee of the wife's interest in the community property, and as to such she takes priority over creditors who reduced their debts to judgment during the husband's lifetime, while as to the debt for the profits withheld she does not. *Id.*

6057. The obligation of a surety on a guardian's bond, being a subsisting one, is not a "contingent claim" referred to in this section, providing for the payment into court of amount that would be payable if the whole were established as absolute. *Pruett v. Caddigan*, 42 Nev. 329, 335, 336 (176 P. 787).

6089. It cannot be said that Rev. Laws, 5329, was intended to cover the whole subject as to appeals so as to make it operate to repeal all other statutes on the subject including Rev. Laws, 4833; Rev. Laws, 4564, this section and Rev. Laws, 6112 and 6113, providing for appeals and certain other orders. *State ex rel. Pacific Reclamation Co. v. Ducker*, 35 Nev. 214, 223 (127 P. 990).

6112. See *State ex rel. Pacific Reclamation Co. v. Ducker*, 35 Nev. 214, under section 6089.

Where a petition is presented in the district court for removal of an administrator, setting up his alleged wrongful acts, and, after hearing both petitioner and respondent, decision was rendered dismissing the petition, such action was not reviewable by mandamus since the court exercised jurisdiction and discretion in hearing and deciding the case and petitioner had a plain, speedy and adequate remedy at law by appeal from such decision under this section. *State ex rel. Freyesleben v. District Court*, 40 Nev. 163, 169 (161 P. 510).

6116. Descent and distribution—When to escheat.

SEC. 259. When any person having title to any estate, not otherwise limited by marriage contract, shall die intestate as to such estate, it shall descend and be distributed, subject to the payment of his or her debts, in the following manner:

First—If there be a surviving husband or wife, and only one child, or the lawful issue of one child, one-half to the surviving husband or wife, and one-half to such child or issue of such child. If there be a surviving husband or wife and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his or her children, and to the lawful issue of any deceased child by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants, and if all of the said descendants are in the same degree of kindred to the intestate they shall share equally, otherwise they shall take according to the right of representation.

Second—If he or she shall leave no issue, the estate shall go, one-half to

the surviving husband or wife, one-fourth to the intestate's father, and one-fourth to the intestate's mother, if both are living; if not, one-half to either the father or mother then living. If he or she shall leave no issue, nor father, nor mother, the whole community property of the intestate shall go to the surviving husband or wife, and one-half of the separate property of the intestate shall go to the surviving husband or wife, and the other half thereof shall go in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation. If he or she shall leave no issue, or husband, or wife, the estate shall go, one-half to the intestate's father and one-half to the intestate's mother, if both are living; if not, the whole estate shall go to either the father or mother then living. If he or she shall leave no issue, father, mother, brother, or sister, or children of any issue, brother or sister, all of the property, both community and separate, of the intestate shall go to the surviving husband or wife.

Third—If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation.

Fourth—If the intestate shall leave no issue, nor husband, nor wife, nor father, nor mother, and no brother or sister living at his or her death, the estate shall go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those who claim through ancestors more remote; *provided, however*, if any person shall die leaving several children, or leaving one child and issue of one or more children, and any such surviving child shall die under age and not having been married, all of the estate that came to such deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who may have died, by right of representation.

Fifth—If at the death of such child, who shall die under age and not having been married, all the other children of this said parent being also dead, and any of them shall have left issue; the estate that came to such child by inheritance from his or her said parent shall descend to all the issue of the other children of the same parent, and if all the said issue are in the same degree of kindred to said child they shall share the said estate equally; otherwise they shall take according to the right of representation.

Sixth—If there be no surviving husband, or wife, or kindred, except a child or children, the estate shall, if there be only one child, all go to that child; and if there be more than one child, the estate shall descend and be distributed to all the intestate's children, share and share alike.

Seventh—If there be no surviving husband, or wife, or kindred, except a child or children and the lawful issue of a child or children, the estate shall descend and be distributed to such child or children and lawful issue of such child or children by right of representation, as follows: To such child or children each a child's part, and to the lawful issue of each deceased child, by right of representation, the same part and proportion that its parent would have received in case such parent had been living at the time of the intestate's death; that is, the lawful issue of any deceased child shall receive the part and proportion that its parent would have received had such parent been living at the time of the intestate's death.

Eighth—If there be no surviving husband, or wife, or kindred, except the lawful issue of a child or children, all of the estate shall descend and be distributed to the lawful issue of such child or children by right of representation, and this rule shall apply to the lawful issue of all such children and to their lawful issue ad infinitum.

Ninth—If the intestate shall leave no husband, nor wife, nor kindred, the estate shall escheat to the state for the support of the common schools. *As amended, Stats. 1899, 113; 1901, 44; 1903, 218; 1913, 56; 1915, 149; 1917, 37.*

Cited, *Winters v. Winters*, 34 Nev. 331 (123 P. 17, 1135).

Similar statutes, 1897, 158; 1899, 110; 1901, 44; 1903, 218; 1915, 149; cited, In *Re Kattenhorn's Estate*, 41 Nev. 379, 380, 383 (171 P. 164).

6131. Idem—Duty of attorney-general—To file information—Citation to issue.

SEC. 274. Whenever the attorney-general shall be informed, or shall have reason to believe, that any real or personal estate has become escheatable to this state for the reasons specified in the preceding section, or that any such estate has for any other reason become escheatable, it shall be his duty to file an information in behalf of the state in the district court of the county wherein such estate, or any part thereof, is situated, setting forth a description of the estate, the name of the person last lawfully seized, the name of the terre-tenant and persons claiming such estate, if known, and the facts and circumstances in consequence of which said estate is claimed to have become escheated, and alleging that by reason thereof the State of Nevada has by law right to such estate; whereupon, such court shall order that a citation be issued to such person or persons, bodies politic, or corporate, alleged in such information to hold, possess or claim such estate, requiring them to appear and show cause why such estate should not be vested in the State of Nevada, said citation to be made returnable within the time allowed by law in other civil actions. The court may also, if deemed advisable, order the citation to be published in a newspaper published in said county (if any) and, if none, then in some other newspaper in this state; *provided, however*, that when the residue remaining of any estate mentioned in the preceding section, after the payment of the costs and expenses of administration and creditors' claims, and other expenses, does not exceed the sum or value of five hundred dollars, the proceedings hereinbefore specified for the escheating of such estate to the State of Nevada shall be dispensed with, and the administrator of such estate, or other legal representative of the deceased, shall, on the order of the court, pay over or deliver such residue to the county treasurer of the county wherein said estate is being probated or is situated, for the benefit of the State of Nevada, and the receipt or certificate of said county treasurer, evidencing such payment or delivery, shall be filed with the clerk of the district court of the county wherein such estate is being probated or is situated, and upon such filing said administrator, or other legal representative of the deceased, shall be released and discharged from all further liability as to such residue, and upon such payment or delivery to him said county treasurer shall notify the attorney-general of the State of Nevada of the same, and shall pay over or deliver such residue to the state treasurer of the State of Nevada, taking his receipt or certificate therefor, and such payment or delivery shall be subject to all of the provisions of this act concerning the recovery of the same from this state by any person or persons found to be entitled thereto. *As amended, Stats. 1919, 34.*

6133. See *State ex rel. Pacific Reclamation Co. v. Ducker*, 35 Nev. 223, under section 6089.

6149. This act cited, *O'Donnell v. District Court*, 40 Nev. 432 (165 P. 759).

6153. Idem—Father and mother legal guardian.

SEC. 5. The father and mother, being each competent to transact his or her own business, and not otherwise unsuitable, shall be entitled to the

twenty-one, hokey-pokey, craps, klondyke, or any banking or percentage game played with cards, dice, or any device, for money, property, checks, credit, or any representative of value; or any gambling game in which any person keeping, conducting, managing or permitting the same to be carried on receives, directly or indirectly, any compensation or reward, or any percentage or share of the money or property played, for keeping, running, carrying on or permitting the said game to be carried on; or to play, maintain or keep, any slot machine played for money or for checks or tokens redeemable in money, or to buy, sell or deal in pools, or make books on horse races, save and except the playing of poker, stud-horse poker, five hundred, solo and whist, when the deal alternates and no percentage taken and that any and all racing associations and corporations which shall obtain license to conduct race meetings in the State of Nevada, pursuant to law, may carry on and permit within the inclosure where horse-racing is held, betting upon the races conducted within said inclosure by and through the pari-mutuel system of betting; and any person who violates any of the above provisions shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the state prison for a period of not less than one year nor more than five years. Every person who shall play at any game whatsoever, other than those hereinabove excepted, for money, property or gain, with cards, dice or any other device which may be adapted to or used in playing any game of chance, or in which chance is a material element, or who shall bet or wager on the hands or cards or sides of such as do play as aforesaid, shall be deemed guilty of a felony; *provided, however*, that nothing in this paragraph shall be construed as prohibiting social games played, only for drinks and cigars served individually, or for prizes of a value not to exceed two dollars, nor nickel-in-the-slot machines for the sale of cigars and drinks and no playback allowed. *As amended, Stats. 1913, 235; 1915, 31, 462.*

6547. [The following act supersedes Rev. Laws, 6547:]

An Act to prevent pollution or contamination of the waters of lakes, rivers and streams in the State of Nevada, and prescribing penalties for the violation thereof, and repealing certain acts in conflict herewith.

Approved March 27, 1917, 412

Pollution of waters prohibited—Penalty.

SECTION 1. Any person or persons, firm, company, corporation or association, city or town who shall deposit, or who shall permit or allow any person or persons in their employ or under their control, management or direction to deposit in any of the waters of the lakes, rivers, streams, and ditches in or running into or through the State of Nevada, or cause to be washed or infiltrated into any of said waters, or place or deposit where the same may be washed or infiltrated into any of said waters, any sawdust, pulp, oils, rubbish, filth, or poisonous or deleterious substance or substances which affects the health of persons, fish or live stock, or renders said waters unpalatable or distasteful, shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined in a sum not less than fifty (\$50) dollars, nor more than five hundred (\$500) dollars, exclusive of court costs.

Repeal of certain act.

SEC. 2. An act entitled "An act to prevent pollution or contamination of the waters of the lakes, rivers, streams and ditches in the State of Nevada, prescribing penalties and making an appropriation to carry out the provisions of this act," approved March 20, 1903, and all acts amendatory or supplemental thereto, are hereby repealed.

6547. Statutes similar to this section (1903, 214; 1907, 104; 1909, 306; 1911, 56; 1913, 405; 1915, 361; 1917, 51; 1917, 412) cited, *City of Reno v. Stoddard*, 40 Nev. 548-551 (167 P. 317).

6603. U. S. flag or Nevada state flag, penalty for desecration of.

SEC. 338. Any person who, in any manner, for exhibition or display, puts or causes to be placed, any inscription, design, device, symbol, portrait, name, advertisement, words, character, marks, or notice, or sets or places any goods, wares, and merchandise whatever upon any flag or ensign of the United States, or state flag of this state, or ensign, evidently purporting to be either of said flags or ensign, or who in any manner appends, annexes or affixes to any such flag or ensign any inscription, design, device, symbol, portrait, name, advertisement, words, marks, notice or token whatever, or who displays or exhibits or causes to be displayed or exhibited, any flag or ensign, evidently purporting to be either of said flags, upon which shall in any manner be put, attached, annexed, or affixed any inscription, design, device, symbol, portrait, name, advertisement, words, marks, notice or token whatever, or who publicly or wilfully mutilates, tramples upon, or who tears down or wilfully and maliciously removes while owned by others, or defames, slanders, or speaks evilly or in a contemptuous manner of or otherwise defaces or defiles any of said flags, or ensign, which are public or private property, shall be deemed guilty of a misdemeanor; *provided, however*, that this act shall not apply to flags or ensigns the property of or used in the service of the United States or of this state, upon which inscriptions, names of actions, words, marks or symbols are placed pursuant to law or authorized regulations. *As amended, Stats. 1919, 438.*

6619. What constitutes vagrancy—Penalty.

SEC. 354. Every—

1. Idle or dissolute person, without visible or known means of living, who has the physical ability to work, and who does not for the space of ten days make proper inquiry for, and use due diligence to seek, employment or labor, when employment is offered him; or

2. Idle or dissolute person who roams about the country from place to place without any lawful business; or

3. Healthy beggar who solicits alms as a business; or

4. Person who makes a practice of going from house to house, begging food, money, or other articles, or seeks admission to such houses upon frivolous pretexts for no other apparent motive than to see who may be therein, or to gain an insight of the premises; or

5. Idle or dissolute person or associate of known thieves who wanders about the streets at late or unusual hours of the night, or prowls around dark alleys, by-ways, and other dark or unfrequented places at any hour of the night without any legitimate business in so doing; or

6. Idle or dissolute person who lodges in any barn, shed, shop, outhouse, or place other than that kept for lodging purposes, without the permission of the owner or person entitled to the possession thereof; or

7. Common drunkard who is in the habit of lying around the streets, alleys, sidewalks, saloons, barrooms, or other public places in a state of intoxication; or

8. Pimp, panderer, procurer, or procuress; or

9. Male person who lives in and about houses of prostitution, or solicits for any prostitute or house of prostitution; or

10. Female person known as a "street walker," or common prostitute, who shall, upon the public streets, or in or about any public place or assemblage, or in any saloon, barroom, clubroom, or any other public or general place of resort for men, or anywhere within the sight or hearing of ladies

or children, conduct or behave herself in an immodest, drunken, indecent, profane, or obscene manner, either by actions, language, or improper exposure of her person; or

11. Boy or male person under the age of twenty-one years, who habitually remains away from his home or place of residence after the hour of 9 o'clock p. m., without some lawful and necessary business, or other imperative duty, or good and sufficient reason or cause for such absence from home after such hour, or his own amusement and pastime, without any legitimate business for so doing, frequents and passes his time in any billiard-room or other place where any such games are played, or any saloon or other place where intoxicating liquor is sold or drank; or who at any hour of the night or day, for his own amusement and pastime, without any legitimate business for so doing, frequents or loafs around any low den, house, or other place of vice, infamy, or immorality, where known thieves and other vicious and infamous persons resort or congregate; or who at any hour of the night, either alone or otherwise, prowls about the streets or town, disturbing the peace and quiet of the neighborhood by loud or unnecessary noise, or committing petty depredations, tricks or pranks, upon the person or property of other people, or by abusive, obscene, or insulting language, or by any manner of rowdiness whatsoever, disturbs or annoys the passers-by, any lawful assemblage of persons, or the neighborhood at large; or

12. Person who keeps a place where lost or stolen property is concealed; or

13. Person who solicits or procures, or who attempts to solicit or procure, money, or other thing of value, by falsely pretending or representing himself or herself to be blind, deaf, dumb, without arms or legs, or to be otherwise physically deficient or suffering any physical defect or infirmity—

Is a vagrant, and shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than three hundred dollars, or both. *As amended, Stats. 1915, 32.*

6624. Cutting, 4711, similar to this section, designates certain acts as constituting arson in the second degree, and prescribes the punishment thereof, and Cutting, 4712, similar to Rev. Laws, 6625, prescribes that one wilfully burning insured property to injure or defraud "shall be adjudged guilty of arson in the second degree and punished accordingly." Held, that the words quoted refer to and are intended to supply the same punishment provided for that offense in the preceding section. *Ex Parte Prosole*, 32 Nev. 378, 380, 381 (108 P. 630).

6625. See *Ex Parte Prosole*, 32 Nev. 378, under section 6624.

6634. Cited, *State v. Patchen*, 36 Nev. 515 (137 P. 406).

In a prosecution for burglary in the first degree, evidence held sufficient to justify finding that the mill was broken into in the nighttime between sunset and sunrise, as defined by this section. *State v. Whitaker*, 39 Nev. 159, 167 (154 P. 927).

6635. Under this section, it is presumed from an unlawful entry that the same was with the intent to commit larceny, unless such entry is satisfactorily explained. *State v. Patchen*, 36 Nev. 510, 515 (137 P. 406).

6638. Grand larceny defined.

SEC. 373. Every person who shall feloniously steal, take, and carry away, lead or drive away, the personal goods or property of another, of the value of fifty dollars or more shall be deemed guilty of grand larceny, and upon conviction thereof shall be punished by imprisonment in the state prison for any term not less than two years nor more than fourteen years. *As amended, Stats. 1915, 119.*

Under Rev. Laws, 7260, 7261, and this section, it was held that under the first-mentioned statute the court, upon conviction, could only impose an indeterminate sentence from one to fourteen years and could not fix a greater or lesser minimum than that provided by the

statute, for the board of pardons may parole the prisoner at any time after the expiration of the minimum sentence. *Ex Parte Melosevich*, 36 Nev. 67, 69 (133 P. 57).

A judgment entered upon a plea of guilty of petit larceny under an indictment charging grand larceny is void as in excess of the jurisdiction of the court to enter. *Ex Parte Dickson*, 36 Nev. 94, 97 (133 P. 393).

6639. See *Ex Parte Dickson*, 36 Nev. 94, under section 6638.

6640. Similar statute (Stats. 1879, 109) cited, *Ex Parte Smith*, 33 Nev. 487 (111 P. 930).

The indictment in this case charged the petitioner with the crime of grand larceny. He was indicted under this section. Under that indictment he could be convicted of the crime of grand larceny, or nothing. *Ex Parte Dickson*, 36 Nev. 98, 99, 102 (133 P. 393).

Cited, *In Re Oxley and Mulvaney*, 38 Nev. 385 (149 P. 992).

Under Stats. 1913, 293, an information, charging theft of "cattle," is not bad, the word "cattle," as used in this section, embracing cows, bulls, and steers of domesticated bovine genus. *State ex rel. Esser v. District court*, 42 Nev. 218, 221, 222, 226 (174 P. 1023, 1024, 1026).

This section embraces cows, bulls and steers of the domesticated bovine genus. *Id.*

The supreme court will take judicial cognizance of the publication of the Revised Laws of the state, compiled and published under the supervision of the code commission, in which this section appears. *Id.*

Section 375½, added by Stats. 1915, 155, providing that it shall be unlawful for any person to have in his possession any hide from which the ears have been removed, or the brand obliterated, cannot be declared invalid for the reason that it is unjust and oppressive, in that the owner and thief are placed in the same class. *Park v. State*, 42 Nev. 386, 389, 390, 394, 397 (178 P. 389, 390, 393; 3 Am. Law Rep. 75).

Section 375½, as added by said act, deprives a person of his property without due process of law against the guaranties of section 1, article 14, of the federal constitution, and section 8, article 1 of the state constitution. *Id.*

This section as added is an unnecessary invasion of property rights, and therefore an unreasonable exertion of the police power. *Id.*

Hides must be preserved intact.

SEC. 375½. It shall be unlawful for any person to have in his possession any hide of any cow, bull, steer, calf, or heifer, from which hide the ears have been removed or the brand cut out or removed, or the brand obliterated, defaced, or disfigured so that the same cannot be readily recognized, and any person having such hide in his possession shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for any term not less than one year nor more than five years. *Added, Stats. 1915, 155.*

6641. Failure to exhibit hide or keep record of brand, misdemeanor.

SEC. 376. It shall be unlawful for the keeper of any slaughter-house, or persons engaged in slaughtering cattle for sale in this state, to purchase any cattle for slaughter, or any slaughtered bovine animal, without having exhibited to him the hide of such animal, and examining the brand and other marks upon such hide, and making and entering in a book kept for that purpose a description of such brands and marks, together with the name of the person from whom the purchase was made, and the date of such purchase. Said book shall be kept at the slaughter-house or business office of the person engaged in slaughtering cattle, and shall be open to the inspection of any person or persons during business hours. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned in the county jail not less than thirty days nor more than two hundred and fifty days, or by both such fine and imprisonment. It shall be the duty of every keeper of any slaughter-house, and engaged in the business of slaughtering any

bovine animals, to keep at his slaughter-house, or place of business a book of record, in which shall be recorded and preserved a description of the brand and other marks upon the hides of each slaughtered bovine animal, together with the name of the person from whom the animal was purchased, and the date of the purchase. Said book shall be opened to the inspection of any person or persons during business hours. Any person violating the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than fifty dollars, nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days nor more than two hundred and fifty days, or by both such fine and imprisonment. *As amended, Stats. 1913, 373.*

Peddler of meat to exhibit hide—Exception—Penalty.

SEC. 376½. It shall be unlawful for any person peddling the meat of any bovine animal, who is not the keeper of any shop or meat-market, to sell such meat without having in his possession, then and there, and upon request exhibiting, the hide of such animal containing the brand and other marks thereon. Any person violating the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than fifty (\$50) dollars nor more than five hundred (\$500) dollars, or imprisoned in the county jail not less than twenty-five days, nor more than two hundred and fifty days, or by both such fine and imprisonment. *Added, Stats. 1919, 298.*

6643. Cited, Goldfield Con. Mines Co. v. Richardson, 194 F. 200.

6644. Stats. 1883, 34, similar to this section, cited, *Ex Parte Smith*, 33 Nev. 486 (111 P. 930).

Cited, Goldfield Con. Mines Co. v. Richardson, 194 F. 200.

6653. Stats. 1887, 81, and Gen. Stats. 4634, 4635, similar to this section, cited, *State ex rel. Freudenberger v. Cole*, 38 Nev. 493 (151 P. 944).

An information alleging that defendant was manager of a county-owned telephone system, and as such manager came into possession of certain money for transmission to the county treasurer, and feloniously converted it to his own use sufficiently charged embezzlement under this section, as to misappropriation of corporation money by agent, manager, or clerk thereof. *State v. McFarlin*, 41 Nev. 486, 489 (172 P. 371).

6654. See *State ex rel. Freudenberger v. Cole*, 38 Nev. 493, under section 6653.

6663. An indictment, charging that the defendant "did falsely and feloniously forge" a check, sufficiently charged that he knew the false or forged character of the check, especially where not objected to before trial. *State v. Kruger*, 34 Nev. 302, 303 (122 P. 483).

6665. Fictitious papers—Rule of evidence—Deemed forgery—Penalty.

SEC. 400. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this state or elsewhere, or with the like intention shall attempt to pass, utter, or publish, or shall have in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check purporting to be the bill, note or check, or other instrument in writing, for the payment of money or property of some bank, corporation, copartnership, or individual, when in fact there shall be no such bank, corporation, copartnership, or individual in existence, the said person knowing the said bill, note, check, or instrument in writing for the payment of money or property to be fictitious, shall be deemed guilty of forgery, and on conviction thereof shall be punished by imprisonment in the state prison for a term not less than one or more than fourteen years. Whenever such note, bill, check, or other instrument in writing is drawn upon any bank, proof that the purported drawer of the same had no account at said bank, shall be deemed

sufficient evidence to sustain the allegation of the nonexistence of the drawer of such instrument. *As amended, Stats. 1915, 15.*

6672. Drawing checks when no deposit or credit—Penalty.

SEC. 407. Every person who shall make, pass, utter or publish with the intention to defraud any other person or persons, firm, corporation or body politic, any bill, note, check or other instrument in writing for the payment of money or the delivery of other valuable property, directed to, or drawn upon, any real or fictitious person, bank, firm, partnership, or corporation, when in fact such person shall have no money, property or credit or shall have insufficient money, property, or credit with the drawee of such instrument to meet and make payment of the same, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison not less than one nor more than two years, or by both such fine and imprisonment. If payment of money is refused on any instrument mentioned above when the instrument calls for the payment of money, because the maker has insufficient money with the drawee to meet and make payment of same, and the person who shall make, pass, utter or publish said instrument shall fail to deposit with the person, bank, firm, partnership or corporation upon which the paper is drawn, within ten days from the date the said instrument was presented for payment, a sufficient sum to pay the amount called for in the instrument or pay to the person holding the instrument the amount thereof, together with any protest fees that have been paid thereon, it shall be prima facie evidence that the person who made, passed, uttered or published the instrument intended to defraud. *And, provided further,* that if any person shall sign his name to a check or draft which has inscribed over his signature the words "I hereby represent that the amount called for in this instrument is on deposit to my credit free of any claim, and acknowledge that this amount has been paid to me upon representation of such fact," and payment of such check or draft is refused by the person or persons, firm, corporation, partnership, or bank upon which it is drawn, because such person shall have no money, property, or credit, or shall have insufficient money, property, or credit with the drawee of the said instrument to meet and make payment of the same, it shall be prima facie evidence that the person who made, passed, uttered or published said instrument intended to defraud. All acts or parts of acts that conflict herewith are hereby repealed. *As amended, Stats. 1917, 10.*

An Act to prohibit false advertising, and providing a penalty therefor.

Approved March 24, 1917, 390

Certain false advertising prohibited.

SECTION 1. It shall be unlawful for any person, firm, corporation or association, who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this state, in a newspaper or other publication or in form of a book, notice, handbill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or any thing so offered to the public, which advertisement contains any

assertion, representation or statement of fact which is untrue, deceptive or misleading.

Penalties.

SEC. 2. Any person, firm, or any officer or managing agent of any corporation or association, who shall violate the provisions of this act shall be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment.

6704. Indictment charging the president of an insurance corporation with obtaining money by selling stock under false pretenses states a felony under this section, and not a misdemeanor under Rev. Laws, 1174, prohibiting officer of any corporation from making false representations, the fact that the accused received the money as president being immaterial. In *Re Crane*, 40 Nev. 338, 340, 342 (163 P. 246).

Rev. Laws, 1174, making it a misdemeanor for an officer of a corporation to make false representations, does not affect the crime of obtaining money under false pretenses defined by this section. *Id.*

6726. Defrauding innkeeper—Penalty.

SEC. 461. Any person who shall obtain food, lodging, or other accommodation at any hotel, inn, boarding, rooming, or eating house with intent to defraud the owner or keeper thereof, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment in the county jail for not more than six months. Proof that lodging, food, or other accommodations were obtained by false pretense, or by false or fictitious show or pretense of any baggage or other property, or that the person refused or neglected to pay for such food, lodging, or other accommodations, or that he gave in payment for such food, lodging, or other accommodation negotiable paper on which payment was refused, or that he absconded without paying, or offering to pay, for such food, lodging, or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, shall be prima facie evidence of the fraudulent intent mentioned herein; but this act shall not apply where there has been an agreement in writing for delay in payment for a period to exceed ten days. All acts or other parts of acts that conflict herewith are hereby repealed. *As amended, Stats. 1917, 35.*

6733. The mere opening, breaking into, tapping or connecting with any pipe, flume, ditch or reservoir does not constitute the crime defined by this section; the taking or removing therefrom of water belonging to another or allowing the same to be taken being an essential element of the crime. *Ex Parte Schultz*, 42 Nev. 254, 257 (174 P. 431, 432).

6747. Under *Cutting*, 4780, similar to this, a complaint sufficiently avers ownership by another than accused, as against collateral attack in false imprisonment against a justice of the peace, where it charges the severance and removal of the property from the possession of the complaining witness; possession being prima facie evidence of ownership. *Gordon v. District Court*, 36 Nev. 1, 11 (131 P. 134; 44 L. R. A. (N.S.) 1078).

An Act to prevent the obtaining of labor under false representation or pretense, and prescribing a penalty therefor.

Approved March 27, 1913, 448

Who liable for misrepresentation—Penalty.

SECTION 1. Any person, persons, partnership, association, company, or corporation (his or its officers, directors or agents), who or which shall employ upon wages any person or persons in any occupation, and who or which at the time of employing such person or persons shall make any false

representation or pretenses as to having sufficient funds to pay such wages, and who after labor has been done under such employment by said employee or employees shall fail upon the discharge or resignation of such employee or employees, for a period of five days after such wages are legally payable, to pay said employee or employees on demand the wages due said employee or employees for such labor, shall be deemed guilty of a misdemeanor, and upon conviction therefor shall be punishable by imprisonment in the county jail not to exceed six months, or by a fine not exceeding five hundred dollars (\$500), or by both such fine and imprisonment.

An Act to prohibit any employer from making any rule or regulation against any of his or her employees on account of engaging in politics or running for public office, and providing a penalty for the violation thereof.

Approved March 6, 1915, 82

Employer shall not prohibit employees.

SECTION 1. It shall be unlawful for any person, firm, or corporation doing business or employing labor in the State of Nevada to make any rule or regulation, prohibiting or preventing any employee from engaging in politics or becoming a candidate for any public office in this state.

Penalty—Principal responsible.

SEC. 2. Any person, firm, or corporation violating the provisions of this act shall upon conviction thereof be fined in a sum of not less than one hundred dollars nor more than five hundred dollars. The foregoing penalty shall be recovered in a suit brought for that purpose by the attorney-general in the name and for the benefit of the State of Nevada, but no such prosecution shall be commenced later than three months after the commission of the offense herein described. In all prosecutions hereunder the person, firm, or corporation violating this act shall be held responsible for the acts of his, her or its managers, officers, agents, and employees.

Damages not prevented.

SEC. 3. Nothing herein contained shall be construed to prevent the injured employee from recovering damages from his or her employer for injury suffered through violation of this act.

6782. Employer may discharge employee—Written reasons for discharge —“Employee” construed.

SEC. 517. The two preceding sections shall not be construed as prohibiting any corporation, company, organization, or individual from giving in writing, at the time said employee leaves or is discharged from the service of said employer, a truthful statement of the reason for such leaving of the service or discharge of such employee, nor shall the foregoing sections be construed to prevent any employer from giving any employee or former employee any statement with reference to any meritorious services which said employee may have rendered to such employer, and it shall be the duty of the employer to supply upon demand from employee, statements as provided in this section. The word “employee,” as used in this act, shall be construed to mean every person who shall have entered upon service or employment of an employer, and such employment shall be deemed to commence from the date of the entry or performance of any service, and any contract of employment, rule, regulation, or device to the contrary shall be void; *provided*, that no such statement shall be required unless the employee shall have been in service for a period of not less than sixty days and that only one such statement shall be issued to such employee. *As amended, Stats. 1915, 275.*

6783. [This section repealed, Stats. 1915, 69, and the following act substituted in lieu thereof:]

An Act making it unlawful for certain persons to accept fees, commissions, or gratuities for the employment of labor, prescribing certain penalties for the violation thereof, and other matters properly connected therewith.

Approved March 2, 1915, 68

Unlawful for employer to demand or receive emolument—Penalty.

SECTION 1. It shall be and is hereby made unlawful for any manager, superintendent, officer, agent, servant, foreman, shift boss, or other employee of any person or corporation, charged or intrusted with the employment of any workmen or laborers, or with the continuance of workmen or laborers in employment, to demand or receive, either directly or indirectly, from any workman or laborer, employed through his agency, or worked or continued in employment under his direction or control, any fee, commission, or gratuity of any kind or nature as the price or condition of the employment of any such workman or laborer, or as the price or condition of his continuance in such employment; and any such manager, superintendent, officer, agent, servant, foreman, shift boss, or other employee of any person or corporation, charged or intrusted with the employment of laborers or workmen for his principal, or under whose direction or control such workmen and laborers are engaged in work and labor for such principal, who shall demand or receive, either directly or indirectly, any fee, commission, or gratuity of any kind or nature, from any workman or laborer employed by him or through his agency, or worked under his direction and control, either as the price and condition of the employment of such workman or laborer, or as the price and condition of the continuance of such workman or laborer in such employment, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50) and not exceeding three hundred dollars (\$300), or by imprisonment not exceeding six (6) months, or both such fine and imprisonment, in the discretion of the court trying the charge.

Certain section repealed.

SEC. 2. Section 518 of "An act concerning crimes and punishments, and repealing certain acts relating thereto," approved March 17, 1911, being section 6783 of the Revised Laws of 1912, is hereby repealed.

6799. Safety cages in mines.

SEC. 534. It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft, at a greater depth than three hundred and fifty feet, unless the said shaft shall be provided with an iron-bonneted safety cage, safety crosshead or safety skip, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations. The safety apparatus shall be securely fastened to the cage, crosshead or skip, and shall be of sufficient strength to hold the cage, crosshead or skip loaded at any depth to which the shaft may be sunk; *provided*, that where safety crosshead is used for other than sinking purposes the same shall be equipped with gates as provided by law for cages; *and provided further*, that where skips are used for other than sinking purposes platforms for men to stand on when being hoisted or lowered shall be placed in said skip not less than four feet from top of same and that an overhead bar be provided for the men to hold to. In any shaft less than three hundred and fifty feet deep where no safety cage, safety crosshead or safety skip is used and where crosshead or crossheads are used.

platforms for employees to ride upon in lowering and hoisting said employees shall be placed above said crosshead or crossheads. Any person or persons, company or companies, corporation or corporations or the managing agent of any person or persons, company or companies, corporation or corporations, violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of five hundred dollars, or imprisonment in the county jail for a term of six months, or by both such fine and imprisonment. *As amended, Stats. 1913, 422.*

This section was not complied with by having a cage somewhere about the workings of a mine without using it, although the employees did not demand its use. *Ryan v. Manhattan B. F. M. Co.*, 38 Nev. 92, 93, 96-98 (145 P. 907).

That it was customary to work through and sink in vertical mining shafts by means of a crosshead and bucket for raising and lowering employees did not justify the violation of this section; it not appearing that the apparatus used was generally or customarily regarded as better or safer than that provided by the statute. *Id.*

In an action for injuries to an employee in a mine caused by the failure to provide an iron-bonneted safety cage as required by this section, evidence that the employer was unaware of the existence of such statute was not admissible. *Id.*

An employer's noncompliance with this section did not entitle an injured employee to damages, unless such noncompliance was the proximate cause of his injuries, and unless a compliance therewith would have avoided the accident and prevented the injuries. *Id.*

The failure of a mining company to provide an iron-bonneted safety cage for raising and lowering employees as required by this statute was the proximate cause of injuries to an employee thrown from the bucket on which he was riding, though the swinging of the bucket against the sides of the shaft and its entanglement with a bell cord were intervening agencies, as the culminating catastrophe would not have happened in the absence of either the omission of the safety appliance or the intervening agencies, and, hence, they operated concurrently. *Id.*

An Act for the prevention of cruelty to animals, defining certain terms and fixing the grade of crimes for violation thereof, and repealing certain sections of an act entitled "An act concerning crimes and punishments, and repealing certain acts relating thereto," approved March 17, 1911.

Approved March 28, 1919, 319

Definitions.

SECTION 1. The word "animal," as used in this article, does not include the human race, but includes every other living creature;

2. The word "torture" or "cruelty" includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted.

Keeping a place where animals are fought.

SEC. 2. A person who keeps or uses, or is in any manner connected with, or interested in the management of, or receives money for the admission of any person to, a house, apartment, pit or place kept or used for baiting or fighting any bird or animal, and any owner or occupant of a house, apartment, pit or place who wilfully procures or permits the same to be used or occupied for such baiting or fighting, is guilty of a misdemeanor. Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases that the complainant has just and reasonable cause to suspect that any of the provisions of law relating to or in any wise affecting animals are being or about to be violated in any particular building or place, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests for such offenses, authorizing him to enter and search such building or place, and

to arrest any person there present found violating any of said laws, and to bring such person before the nearest magistrate of competent jurisdiction to be dealt with according to law.

Instigating fights between birds and animals.

SEC. 3. A person who sets on foot, instigates, promotes, or carries on, or does any act as assistant, umpire, or principal, or is a witness of, or in any way aids in or engages in the furtherance of any fight between cocks or other birds, or dogs, bulls, bears, or other animals, premeditated by any person owning, or having custody of such birds or animals, is guilty of a misdemeanor.

Officer may take possession of animals or implements used in fights among animals.

SEC. 4. Any officer authorized by law to make arrests may lawfully take possession of any animals, or implements, or other property used or employed, or about to be used or employed, in the violation of any provision of law relating to fights among animals. He shall state to the person in charge thereof, at the time of such taking, his name and residence, and also the time and place at which the application provided for by the next section will be made.

Disposition of animals or implements used in fights among animals.

SEC. 5. The officer, after taking possession of such animals, or implements or other property, pursuant to the preceding section, shall apply to the magistrate before whom complaint is made against the offender violating such provision of law, for the order next hereinafter mentioned, and shall make and file an affidavit with such magistrate, stating therein the name of the offender charged in such complaint, the time, place and description of the animals, implements or other property so taken, together with the name of the party who claims the same, if known, and that the affiant has reason to believe and does believe, stating the grounds of such belief, that the same were used or employed, or were about to be used or employed, in such violation, and will establish the truth thereof upon the trial of such offender. He shall then deliver such animals, implements or other property, to such magistrate, who shall thereupon, by order in writing, place the same in the custody of an officer or other proper person in such order named and designated, to be by him kept until the trial or final discharge of the offender, and shall send a copy of such order, without delay, to the district attorney of the county. The officer or person so named and designated in such order shall immediately thereupon assume such custody, and shall retain the same for the purpose of evidence upon such trial, subject to the order of the court before which such offender may be required to appear, until his final discharge or conviction. Upon the conviction of such offender, the animals, implements, or other property, shall be adjudged by the court to be forfeited. In the event of the acquittal or final discharge, without conviction, of such offender, said court shall, on demand, direct the delivery of the property so held in custody to the owner thereof.

Overdriving, torturing and injuring animals—Failing to provide proper sustenance.

SEC. 6. A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured,

maimed, mutilated or killed, or to be deprived of necessary food or drink, or who wilfully sets on foot, instigates, engages in, or in any way furthers an act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a misdemeanor.

Nothing herein contained shall be construed to prohibit or interfere with any properly conducted scientific experiments or investigations, which experiments shall be performed only under the authority of the faculty of some regularly incorporated medical college or university of this state.

Abandonment of disabled animal.

SEC. 7. A person being the owner or possessor, or having charge or custody of a maimed, diseased, disabled or infirm animal, who abandons such animal or leaves it to die in a public street, road or public place, or who allows it to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor. Any agent or officer of any society for the prevention of cruelty to animals, or of any society duly incorporated for that purpose, or any police officer, may lawfully destroy or cause to be destroyed any animal found abandoned and not properly cared for, appearing, in the judgment of two reputable citizens called by him to view the same in his presence, to be glandered, injured or diseased past recovery for any useful purpose; or after such agent or officer has obtained in writing from the owner of such animal his consent to such destruction. When any person arrested is, at the time of such arrest, in charge of any animal or of any vehicle drawn by or containing any animal, any agent or officer of said society or societies or any police officer may take charge of such animal and of such vehicle and its contents and deposit the same in a safe place of custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a charge thereon.

Failure to provide proper food and drink to impounded animal.

SEC. 8. A person who, having impounded or confined any animal, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of a misdemeanor. In case any animal shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person from time to time, and as often as it shall be necessary, to enter into and upon any pound in which any such animal shall be so confined and to supply it with necessary food and water, so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

Selling or offering to sell or exposing diseased animal.

SEC. 9. A person who wilfully sells or offers to sell, uses, exposes, or causes or permits to be sold, offered for sale, used or exposed, any horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the life or health of human beings, or animals, or which is diseased past recovery, or who refuses upon demand to deprive of life an animal affected with any such disease, is guilty of a misdemeanor.

Selling disabled horses.

SEC. 10. It shall be unlawful for any person to sell any horse which, by

reason of disease, could not be worked in this state without violating the law against cruelty to animals.

Poisoning or attempting to poison animals.

SEC. 11. A person who unjustifiably administers any poisonous or noxious drug or substance to a horse, mule or domestic cattle, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by a horse, mule or by domestic cattle, whether such horse, mule or domestic cattle be the property of himself or another, is guilty of a felony. A person who unjustifiably administers any poisonous or noxious drug or substance to any animal other than a horse, mule or domestic cattle, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal other than a horse, mule or domestic cattle, whether such animal be the property of himself or another, is guilty of a misdemeanor; *provided*, that nothing in this act shall be construed so as to prevent the destruction of noxious animals.

Throwing substance injurious to animals in public place.

SEC. 12. A person who wilfully throws, drops or places, or causes to be thrown, dropped or placed upon any road, highway, street or public place, any glass, nails, pieces of metal, or other substance which might wound, disable or injure any animal, is guilty of a misdemeanor.

Keeping milch cows in unhealthy places and feeding them with food producing unwholesome milk.

SEC. 13. A person who keeps a cow or any animal for the production of milk, in a crowded or unhealthy place, or in a diseased condition, or feeds such cow or animal upon any food that produces impure or unwholesome milk, is guilty of a misdemeanor.

Transporting animals for more than twenty-eight consecutive hours without unloading.

SEC. 14. A railway corporation, or an owner, agent, consignee, or person in charge of any horses, sheep, cattle or swine, in the course of or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-eight consecutive hours, without unloading for rest, water and feeding during five consecutive hours, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. In estimating such confinement, the time during which the animals have been confined without rest on connecting roads from which they are received, must be computed; *provided*, the time of confinement prescribed in this act may be extended to thirty-six hours upon the written request of the owner or the person in custody of a particular shipment of live stock, which written request shall be separate and apart from any printed bill of lading, or other railroad form, which request for extension of time shall be made to the conductor of train, agent, or other authorized agent of the railroad company over which said stock is being transported.

Running horses on highway.

SEC. 15. A person driving any vehicle upon any plank road, turnpike or public highway, who unjustifiably runs the horses drawing the same, or causes or permits them to run, is guilty of a misdemeanor.

Carrying animal in cruel manner.

SEC. 16. A person who carries or causes to be carried in or upon any vessel or vehicle or otherwise any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of a misdemeanor.

Certain sections repealed.

SEC. 17. Sections numbered 482 and 550 of that certain act entitled "An act concerning crimes and punishments and repealing certain acts relating thereto," approved March 17, 1911, being sections numbered 6747 and 6815, respectively, of the Revised Laws of Nevada, 1912, are hereby repealed.

6827. The legislature provides a criminal procedure whereby the accused shall be brought to trial, and has endeavored, through the adoption of the common law, to provide against the possibility of a criminal avoiding punishment for any acts made criminal under our statutory laws or by reason of the common law. *Ex Parte Tranmer*, 35 Nev. 67 (126 P. 337; 41 L. R. A. (N.S.) 1095).

CRIMINAL PRACTICE

6870. Giving or refusing to give bond, effect—Imprisonment.

SEC. 20. If the bond required by the last section is given, the person complained of shall be discharged. If he does not give it, the magistrate must commit him to prison until he gives such bond, specifying in the warrant the requirement to give security, the amount thereof, and the omission to pay the same; *provided*, that in no event shall the person complained of be confined in prison for a period of longer than six months for a failure or omission to give such bond. *As amended, Stats. 1915, 16.*

6894. Complaint on behalf of state for benefit of a county, stating that the complainant is a citizen, resident and taxpayer of the county, and is foreman of the grand jury and at the request of the grand jury petitions for removal of a county commissioner, was a proper petition under Rev. Laws, 2851, et seq., providing for removal, and not under this section, since the allegations as to action on the grand jury's request were surplusage; the complaint being sufficient without them. *Ex Parte Jones and Gregory*, 41 Nev. 523, 528 (173 P. 885).

6903. Cited, *Ex Parte Jones and Gregory*, 41 Nev. 528 (173 P. 885).

6908. Under this section, Rev. Laws, 6921 and 7459, one sentenced to life imprisonment for murder may be tried pending his incarceration for a murder previously committed, and, in the event of his conviction thereof and sentence to death, the sentence may be carried into execution, notwithstanding Rev. Laws, 7256, providing that, where defendant has been convicted of two or more offenses before judgment on either, the judgment may be that the imprisonment on any one may commence at the expiration of the imprisonment on any other. *Ex Parte Tranmer*, 35 Nev. 56, 68 (126 P. 337; 41 L. R. A. (N.S.) 1095).

Cited, *Eureka Bank Cases*, 35 Nev. 107 (126 P. 655; 129 P. 308).

6921. See *Ex Parte Tranmer*, 35 Nev. 56, under section 6908.

6954. Cited, *Smith v. State*, 38 Nev. 482 (151 P. 512; L. R. A. 1916A, 1276).

6977. Cited, *State v. Clark*, 36 Nev. 477 (135 P. 1083).

6987. Testimony on a preliminary hearing for larceny from the person, held, in habeas corpus proceedings, not to make reasonable or probable that the crime was committed by accused, so as to constitute the sufficient cause necessary under this section for holding them to answer. *Ex Parte Williams and Lathrop*, 39 Nev. 440, 444 (159 P. 518).

6999. Cited, *Eureka Bank Cases*, 35 Nev. 107 (126 P. 655; 129 P. 308).

7003. On resubmission of an indictment to the grand jury accused was "held to answer" within this section. *State v. Bachman*, 41 Nev. 197, 204 (168 P. 733).

7003-7008. Under these sections a challenge should be made before the grand jury is sworn, if the accused has been previously bound over. *State v. Towers*, 37 Nev. 104 (139 P. 776; Ann. Cas. 1916D, 269).

7004. Cited, *Eureka Bank Cases*, 35 Nev. 147 (126 P. 655; 129 P. 308).

Cited, *McComb v. District Court*, 36 Nev. 421, 433 (136 P. 563).

7005. Under section 7090 and this section, the indictment may be set aside by the court in which the defendant is arraigned, upon motion, when the defendant has not been held to answer before the finding of the indictment, on the ground that a state of mind exists upon the part of the grand juror which would prevent him from acting impartially and without prejudice. *Eureka Bank Cases*, 35 Nev. 86 (126 P. 655; 129 P. 308).

Under this section it was held that a grand juror, who had formed a belief or opinion from statements made to him that defendants were keeping a gambling-place, was not disqualified where he further testified that his opinion was not such as would justify him in making a charge against accused. *State v. Williams*, 35 Nev. 276, 281 (129 P. 317).

Under this section and Rev. Laws, 7010, providing that an accused can take advantage of any objection to the panel or to an individual grand juror "in no other mode than by challenge," an accused waived his right to object that one of the jurors was a resident of another state by waiting until the time for pleading to the indictment, more than two weeks after the impaneling of the grand jury, when opportunity was given his counsel to challenge, though accused was not then present. *McComb v. District Court*, 36 Nev. 417, 421, 433, 441 (136 P. 563).

Cited, *Eureka Bank Cases*, 35 Nev. 147 (126 P. 655; 129 P. 308).

Under this section, subd. 6, Rev. Laws, 7399, 7401, 7044, 7101, and 7024, it was held that, as a reconsideration of the charge or the evidence would be necessary, it could not be resubmitted to the same grand jury, which, having already formed an opinion on the merits, was subject to the challenge that their state of mind prevented them from acting impartially, but that the resubmission must be to another grand jury. *State v. Towers*, 37 Nev. 94, 96, 100 (139 P. 776; Ann. Cas. 1916D, 269).

One cannot complain of the court's refusal to consider the challenges before the grand jury was sworn, where he failed to take advantage of the ruling of the court that all points that could be raised then might be raised at the proper stage of the proceeding, in view of Rev. Laws, 7090, providing that indictments may be set aside on motion for any of the grounds which would have been good as challenges either to the panel or to any individual grand juror. *State v. Bachman*, 41 Nev. 197, 202, 210 (168 P. 733).

One who bases an opinion as to a crime merely upon rumor and current publications is not disqualified from serving on a grand jury returning an indictment as to such crime under subdivision 6 of this section. *Parus v. District Court*, 42 Nev. 229, 243, 248 (174 P. 706, 710, 712).

7008. Cited, *McComb v. District Court*, 36 Nev. 424 (136 P. 563).

7009. Cited, *McComb v. District Court*, 36 Nev. 424 (136 P. 563).

7010. See *McComb v. District Court*, 36 Nev. 417, under section 7005.

Cited, *State v. Towers*, 37 Nev. 104 (139 P. 776; Ann. Cas. 1916D, 269).

7012. It is the commission of an offense within the county which gives the grand jury authority to indict. Under Rev. Laws, 7020, "the grand jury must inquire into all public offenses committed and triable in the jurisdiction of the court." Under Rev. Laws, 7012 and 7013, the foreman and members of the grand jury are required to take an oath to present all offenses "committed and triable within the county of which you shall have or can obtain legal evidence"; and under Rev. Laws, 7026, indictments shall be found "when all the evidence taken together is such as would, if unexplained or uncontradicted, warrant a conviction by the trial jury." Under these statutory provisions the grand jury has not power to indict without evidence of the commission of an act constituting a criminal offense in the county, which would sustain a conviction by a grand jury. *Eureka Bank Cases*, 35 Nev. 82, 107 (126 P. 655; 129 P. 308).

7013. Cited, *Eureka Bank Cases*, 35 Nev. 107 (126 P. 655; 129 P. 308).

7015. Cited, *Eureka Bank Cases*, 35 Nev. 107 (126 P. 655; 129 P. 308).

7020. Cited, *Eureka Bank Cases*, 35 Nev. 107 (126 P. 655; 129 P. 308).

7022. Cited, *Eureka Bank Cases*, 35 Nev. 107 (126 P. 655; 129 P. 308).

7024. See *State v. Towers*, 37 Nev. 94, under section 7005.

7026. See *Eureka Bank Cases*, 35 Nev. 82, under section 7012.

7028. Under this section, Rev. Laws, 7029, 4148, and 4153, it was held that, there being a presumption that public officers performed the duties required of them by law, the grand jury cannot hire an accountant to examine the books of county officials; it being their duty, in case there is reason to believe that the books of the county should be audited, to request either the board of county commissioners or the governor to provide for such audit. *Stone v. Bell*, 35 Nev. 240, 245 (129 P. 458).

The grand jury being without statutory authority to hire an accountant to audit the books of county officers, the district judge, though required by Rev. Laws, 4924, to charge grand juries as to their duties, part of which this section provides shall be an inquiry into the wilful and corrupt misconduct of public officers, has no inherent authority to engage a private accountant to examine and audit the books of all county officers; it not appearing that there was any reasonable ground to believe that such officers were guilty of misconduct. *Id.*

7029. See *Stone v. Bell*, 35 Nev. 240, under section 7028.

7042. Similar section (Gen. Stats. 4106) cited, *Parus v. District Court*, 42 Nev. 252, 174 P. 713.

7043. Similar section (Gen. Stats. 4107) cited, *Parus v. District Court*, 42 Nev. 252, 174 P. 713.

7044. See *State v. Towers*, 37 Nev. 94, under section 7005.

The Supreme Court of California has repeatedly held, in construing the corresponding section in the code of that state, that failure to make an order of resubmission does not operate as a bar to another prosecution for the same offense. In *Re Hironymous*, 38 Nev. 199 (147 P. 453).

*An Act providing for the prosecution and punishment of crimes,
misdemeanors and offenses by information.*

Approved March 24, 1913, 293

Courts may act upon information.

SECTION 1. The several courts of this state shall have and may exercise the same power and jurisdiction, to try and determine prosecutions upon information for crimes, misdemeanors and offenses, to issue writs and process and do all other acts therein as in cases of like prosecution under indictment.

District attorney or deputy must be informant.

SEC. 2. All information shall be filed in the court having jurisdiction of the offenses specified therein, by the district attorney of the proper county as informant, and his name shall be subscribed thereto by himself or by his deputy. He shall endorse thereon the names of such witnesses as are known to him at the time of filing the same, and shall also endorse upon such information the names of such other witnesses as may become known to him before the trial at such time as the court may, by rule or otherwise prescribe; but this shall not preclude the calling of witnesses whose names, or the materiality of whose testimony are first learned by the district attorney upon the trial. In all cases in which the defendant has not had or waived a preliminary examination there shall be filed with the information the affidavit of some credible person verifying the information upon the personal knowledge of affiant that the offense was committed.

Offense stated in plain language.

SEC. 3. The offense charged in any information shall be stated in plain, concise language without prolixity or unnecessary repetition. Different

offenses and the different degrees of the same offense may be joined in one information in all cases where the same might be joined by different counts in one indictment; and in all cases the defendant shall have the same rights as to all proceedings therein as he would have if prosecuted for the same offense under indictment.

Information sufficient, when—Form.

SEC. 4. The information shall be sufficient if it can be understood therefrom:

First—That it is entitled in a court having authority to receive it, though the name of the court be not accurately set forth.

Second—That the defendant is named; or if his name cannot be discovered, that he be described by a fictitious name, with a statement that he has refused to discover his real name.

Third—That the offense was committed at some place within the jurisdiction of the court.

Fourth—That the offense was committed at some time prior to the finding of the indictment.

Fifth—That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

Seventh—That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case.

The information may be in the following form:

State of Nevada, County of, ss.

In the court. The State of Nevada against A. B. C. D., district attorney within and for the county of in the state aforesaid, in the name and by the authority of the State of Nevada, informs the court that A. B. on the day of, A. D. 19....., at the said county of, did (here state offense) against the peace and dignity of the State of Nevada.

C. D., district attorney; or C. D., district attorney, by H. M., deputy.

Information sufficient, when—Proviso.

SEC. 5. No information shall be deemed insufficient, nor shall the trial, judgment, or other proceedings thereon be affected by reason of any defect or imperfection in matters of form which shall not tend to the prejudice of the defendant; and the court may, on application, direct the information to be amended to supply the deficiency or omission when, by such amendments, the nature of the charge shall not be changed and the defendant's defense to the action on the merits will not be prejudiced thereby; *provided*, the court may in its discretion allow a postponement of the trial.

Laws apply same as upon indictment.

SEC. 6. All provisions of law applying to prosecutions upon indictments, to writs and process therein, and the issuing and service thereof, to motions, pleadings, trials and punishments, or the passing or execution of any sentence, and to all other proceedings in cases of indictment, whether in a court of original or appellate jurisdiction, shall to the same extent, and in the same manner as near as may be, apply to informations and to all prosecutions and proceedings thereon.

Accused may be jailed.

SEC. 7. Any person who may, according to law, be committed to jail, or become recognized or held to bail, with sureties for his appearance in

court, to answer to any indictment, may in like manner be so committed to jail or become recognized and held to bail for his appearance to answer to any information or indictment, as the case may be.

Duty of district attorney.

SEC. 8. It shall be the duty of the district attorney of the proper district to inquire into all cases of preliminary examinations as provided by law, touching the commission of any offense, whether the offenders shall be committed to jail, or be recognized or held to bail; and if the district attorney shall determine in any such case that an information ought not to be filed, he shall file with the clerk of the court having jurisdiction of such supposed offense a written statement containing his reasons, in fact and in law, for not filing any information in such case; and such statement shall be filed within ten days after the holding of such preliminary examination.

Information, how made—Upon affidavit, when.

SEC. 9. An information may be filed against any person for any offense when such person has had a preliminary examination as provided by law before a justice of the peace, or other examining officer or magistrate, and has been bound over to appear at the court having jurisdiction, or shall have waived his right to such preliminary examination. If, however, upon such preliminary examination the accused has been discharged, or the affidavit or complaint upon which the examination has been held has not been delivered to the clerk of the proper court, the district attorney may, upon affidavit of any person who has knowledge of the commission of an offense, and who is a competent witness to testify in the case, setting forth the offense and the name of the person or persons charged with the commission thereof, upon being furnished with the names of the witnesses for the prosecution, by leave of the court first had, file an information, and process shall forthwith issue thereon. The affidavit mentioned herein need not be filed in cases where the defendant has waived a preliminary examination, or upon such preliminary examination has been bound over to appear at the court having jurisdiction. All informations shall set forth the crime committed according to the facts. *As amended, Stats. 1915, 16.*

See *Ex Parte Oxley and Mulvaney*, 38 Nev. 379, 382, under this section of the information act of 1913, 293.

See *State v. Wells*, 39 Nev. 432, under the information act of 1913, 293.

Judge may require district attorney to prosecute.

SEC. 10. The judge of the court having jurisdiction may in extreme cases, upon affidavit filed with him of the commission of a crime, require the district attorney to prosecute any person for such crime, and may compel by attachment, fine or imprisonment a compliance by the district attorney with the provisions of this section.

Transcript of preliminary examination filed.

SEC. 11. Whenever any preliminary examination has been had and the defendant held to appear before a court having jurisdiction of the offense, it shall be the duty of the magistrate or other officer holding such examination to deliver to the clerk of said court within ten days after the holding of such examination the complaint, bonds, affidavits, warrants and a full transcript of the proceedings of such examination.

Duty of district attorney.

SEC. 12. It shall be the duty of the district attorney of the proper county, by himself or deputy, to be present at and conduct the prosecution in all preliminary examinations where a felony is charged.

Deputy same as principal.

SEC. 13. All matters and things required to be done by the district attorney by the provisions of this act may be done with like force and effect by his deputy.

Not to affect pending cases.

SEC. 14. Nothing in this act shall be held to apply to, or in any manner affect, any indictment, trial, writ of error, appeal or other proceeding, judgment or sentence, in cases of the violation of any of the provisions of the criminal law of the State of Nevada now pending in any court in this state, but the same shall be held and conducted and adjudged as provided by the law in force before this act shall take effect. Any offense which shall have been committed before this act takes effect shall be inquired of, prosecuted and punished in accordance with the law in force at the time of the commission of such offense.

Cited, *In Re Hironymous*, 38 Nev. 203 (147 P. 453).

Under this act an information was filed, charging defendants with grand larceny. Upon preliminary examination they were discharged, and thereupon, a second information, charging the same offense being filed against them, they were committed, and sought habeas corpus, contending that the statute rendered such commitment invalid. Held that, while such statute was necessary to authorize prosecution on information, since it contained nothing negating the magistrate's power to hold a second preliminary examination after the accused's discharge, the mere fact that it provided a method whereby an information could be filed against one so previously discharged did not operate to change the nonstatutory rule that discharge on a prior examination is no bar to another examination and a commitment for the same offense. *In Re Oxley and Mulvaney*, 38 Nev. 379, 382 (149 P. 992).

Under this act, sec. 2 and sec. 9, as amended by Stats. 1915, 16, the district attorney may file an information upon affidavit of any person knowing of the offense, etc., but such affidavit need not be filed where the defendant has waived a preliminary examination or upon such examination has been bound over. One accused of crime has a right to opportunity to either have or waive preliminary examination. *State v. Wells*, 39 Nev. 432-435 (159 P. 520).

See *State v. Wells*, 39 Nev. 432, under section 2 of this act.

Under this act, requiring charge to be clearly set forth, etc., an information, charging theft of "cattle," is not bad; the word "cattle," as used in Rev. Laws, 6640, embracing cows, bulls, and steers of domesticated bovine genus. *State ex rel. Esser v. District Court*, 42 Nev. 218, 222, 223 (174 P. 1024, 1025).

7049. Indictment or information, first pleading.

SEC. 199. The first pleading on the part of the state is the indictment or information. *As amended, Stats. 1919, 416.*

7050. Indictment or information, what to contain.

SEC. 200. The indictment or information must contain the title of the action, specifying the name of the court to which the same is presented and the names of the parties, and a statement of the acts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended. *As amended, Stats. 1919, 416.*

When questioned for the first time on appeal an indictment will be held sufficient unless it is so defective that by no construction within the reasonable limit of the language used it can be said to charge the offense for which the defendant was convicted. *State v. Hughes*, 31 Nev. 270, 273 (102 P. 562).

See *State v. MacKinnon*, 41 Nev. 182, under section 6412.

7052. In view of this section, providing that evidence tending to prove a charge need not be stated in the indictment, such allegations will be rejected as mere surplusage. *In Re Crane*, 40 Nev. 338, 340 (163 P. 246).

7053. Indictment or information when defendant named fictitiously or erroneously.

SEC. 203. When a defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings referring to the fact of his being charged by the name mentioned in the indictment or information. *As amended, Stats. 1919, 416.*

7054. Indictment or information to charge only one offense.

SEC. 204. The indictment or information may charge different offenses or different statements of the same offenses, under separate counts, but they must all relate to the same act, transaction, or event, and charges of offenses occurring at different and distinct times and places must not be joined. The prosecution is not required to elect between the different offenses or counts set forth in the indictment or information, but the defendant may be convicted of but one of the offenses charged, and the same must be stated in the verdict. *As amended, Stats. 1919, 416.*

7055. Indictment or information—Time of offense, how stated.

SEC. 205. The precise time at which an offense was committed need not be stated in the indictment or information, but it may be alleged to have been committed at any time before the finding of the indictment or the filing of the information, except where or when the time is a material ingredient to the offense. *As amended, Stats. 1919, 416.*

7057. Construction of words in indictment or information.

SEC. 207. The words used in an indictment or information shall be construed in the usual acceptance in common language, except such words and phrases as are defined by law, and these shall be construed according to their legal meaning. *As amended, Stats. 1919, 417.*

7058. Exact words of statute not necessary.

SEC. 208. Words used in a statute to define a public offense need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used. *As amended, Stats. 1919, 417.*

7059. Indictment or information, when sufficient.

SEC. 209. The indictment or information shall be sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not accurately set forth.

2. If an indictment, that it was found by a grand jury of the county in which the court was held, or, if an information, that it was subscribed and presented to the court by the district attorney of the county in which the court was held.

3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with the statement that his true name is to the grand jury or district attorney, as the case may be, unknown.

4. That the offense was committed at some place within the jurisdiction of the court.

5. That the offense was committed at some time prior to the time of finding the indictment or filing the information.

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition and in such a manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense is stated with such a

degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case. *As amended, Stats. 1919, 417.*

In view of Cutting, 4208, similar to this section, providing that the offense charged shall be distinctly set forth in ordinary and concise language, so as to enable a person of common understanding to know what is intended, and the general rule that an indictment charging an offense in the words of the statute is sufficient, an indictment for forgery sufficiently charged the offense by the averment that the defendant "attempted to pass a fictitious check," particularly when the sufficiency of the indictment was not raised until after verdict. *State v. Raymond*, 34 Nev. 198, 202 (117 P. 17).

In construing an indictment questioned for the first time on appeal, it must be held sufficient, unless so defective that by no construction can it be said to charge the offense for which defendant was convicted. *Id.*

7060. Defect in form not material if not prejudicial.

SEC. 210. No indictment or information shall be deemed insufficient, nor shall the trial, judgment or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not tend to the prejudice of a substantial right of the defendant upon its merits. *As amended, Stats. 1919, 417.*

Under this section, where, in an abundance of precaution, the court, instead of directing an indictment to be amended to cure a clerical error, dismissed the indictment and reconvened the grand jury, which thereupon returned a second indictment, the new indictment should be regarded in effect as simply an amendment of the first indictment. In *Re Hironymous*, 38 Nev. 195, 202 (147 P. 453).

7061. What need not be stated.

SEC. 211. Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment or information. *As amended, Stats. 1919, 418.*

7064. Requisites of indictment or information for libel.

SEC. 214. An indictment or information for libel need not set forth any intrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published concerning him and the fact that it was so published must be established on the trial. *As amended, Stats. 1919, 418.*

7065. Trial for forgery—Lost instrument, description of, immaterial.

SEC. 215. When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment or information and established on the trial, the misdescription of the instrument shall be deemed immaterial. *As amended, Stats. 1919, 418.*

7066. Perjury, what deemed sufficient.

SEC. 216. In an indictment or information for perjury or subornation of perjury, it is sufficient to set forth the substances of the controversy or matter in respect to which the offense was committed, and in what court, or before whom, the oath alleged to be false was taken, and that the court or the person before whom it was taken had authority to administer the same, with proper allegations as to the falsity of the matter of which the perjury is assigned; but the indictment or information need not set forth the pleadings, record or proceedings with which the oath is connected, or the commission or the authority of the court or person before whom the perjury was committed. *As amended, Stats. 1919, 418.*

7067. Obtaining under false pretense, what sufficient description.

SEC. 217. In every complaint, indictment or information for obtaining or attempting to obtain any chose in action, money, goods, wares, chattels, effects or other valuable things, by false representations or by causing or procuring others to report falsely of his wealth or mercantile character, or by any false pretense whatsoever, it shall be a sufficient description of the offense to charge that the accused did, at a certain time and place, unlawfully obtain, or attempt to obtain, as the case may be, from A. B. his money or property, describing it generally, where it can be done, by means and by use of a cheat, or fraud, or trick, or deception, or false representation, or false pretense, or confidence game, or false and bogus check, or instrument, or coin, or metal, as the case may be, with intent to cheat and defraud the said A. B. *As amended, Stats. 1919, 418.*

7068. What sufficient in charge of larceny or embezzlement.

SEC. 218. In an indictment or information for the larceny or embezzlement of money, bank-notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank-notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof. *As amended, Stats. 1919, 419.*

7069. Same for selling or keeping obscene books.

SEC. 219. An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof. *As amended, Stats. 1919, 419.*

7070. Against several.

SEC. 220. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted. *As amended, Stats. 1919, 419.*

7071. No distinction between principal and accessory before the fact.

SEC. 221. No distinction shall exist between an accessory before the fact and a principal in the first and second degree in cases of felony and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried and punished as principals, and no other facts need be alleged in any indictment or information against such an accessory than are required in an indictment or information against his principal. *As amended, Stats. 1919, 419.*

7072. Accessory after fact may be prosecuted.

SEC. 222. An accessory after the fact to the commission of a felony may be prosecuted by an indictment or information, tried and punished, though the principal may be neither prosecuted nor tried, and though the principal may have been acquitted. *As amended, Stats. 1919, 419.*

7073. Compounding and concealing offenses, punished.

SEC. 223. A person may be indicted or informed against for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity, or a reward, or an engagement, or understanding, express or implied, to compound or conceal the offense or to

abstain from a prosecution therefor or to withhold any evidence thereof, though the person guilty of the original offense has not been indicted, informed against nor tried. *As amended, Stats. 1919, 419.*

7074. Defendant must be arraigned.

SEC. 224. When the indictment or information is filed, the defendant must be arraigned thereon before the court in which it is found unless the cause is transferred to some other county for trial. *As amended, Stats. 1919, 420.*

7075. Defendant charged with felony must appear personally.

SEC. 225. If the indictment or information be for a felony, the defendant must be personally present; but if for a misdemeanor, his personal appearance is unnecessary and he may appear upon arraignment by counsel. *As amended, Stats. 1919, 420.*

Cited, *State v. Clark*, 36 Nev. 477 (135 P. 1083).

7077. Failure of defendant on bail to appear, procedure—Bench warrant.

SEC. 227. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest; if the defendant has been indicted by the grand jury or informed against by the district attorney of the county without having been previously charged or held to answer, the court may also direct the clerk to issue a bench warrant for his arrest. *As amended, Stats. 1919, 420.*

7079. Form of bench warrant.

SEC. 229. The bench warrant upon the indictment or information shall be substantially in the following form:

County of..... The State of Nevada, to any sheriff, constable, marshal, policeman, or peace officer in this state: An indictment having been found (or information filed) on the.....day of....., A. D. 19....., in the district court of the....., county of....., charging C. D. with the crime of (designating it generally), you are therefore commanded forthwith to arrest the above-named C. D. and bring him before that court to answer the indictment or information; or if the court is not in session that you deliver him into the custody of the sheriff of the county of..... By order of the court. Given under my hand with the seal of the court affixed this.....day of....., A. D. 19..... E. F., Clerk. (Seal.) *As amended, Stats. 1919, 420.*

7083. Bail increased, when.

SEC. 233. When the indictment or information is for a felony and the defendant, before the filing thereof has given bail for his appearance to answer the charge, the court in which the indictment or information is presented, or in which it is pending, may order the defendant to be committed to actual custody unless he gives bail in an increased amount, to be specified in the order. *As amended, Stats. 1919, 421.*

7086. Arraignment, how made.

SEC. 236. The arraignment must be made by the court or by the clerk, or district attorney, under its direction, and consists in reading the indictment or information to the defendant, and delivering to him a copy thereof and of the indorsements thereon including the list of witnesses indorsed on

it and asking him whether he pleads guilty or not guilty to the indictment or information. *As amended, Stats. 1919, 421.*

7087. Procedure when defendant does not declare true name.

SEC. 237. When the defendant is arraigned he must be informed that, if the name by which he is prosecuted is not his true name, he must then declare his true name or be proceeded against by the name in the indictment or information; if he gives no other name, the court may proceed accordingly; but, if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information or indictment may be had against him by that name, referring also to the name by which he was first charged therein. *As amended, Stats. 1919, 421.*

7088. Time given to answer arraignment.

SEC. 238. If on the arraignment the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment or information. *As amended, Stats. 1919, 421.*

7089. Defendant may answer, demur or plead.

SEC. 239. The defendant may, in answer to the arraignment, move to set aside, demur or plead to the indictment or information. *As amended, Stats. 1919, 421.*

7090. When indictment or information set aside.

SEC. 240. The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in any of the following cases:

If it be an indictment:

1. Where it is not found indorsed and presented as prescribed in this act.
2. When the names of the witnesses examined before the grand jury, or whose deposition may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon.

3. When a person is permitted to be present during the session of the grand jury, when the charge embraced in the indictment is under consideration, except as provided in section 180.

4. When the defendant has not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

If it be an information:

1. That it was not subscribed by the district attorney of the county. *As amended, Stats. 1919, 421.*

See Eureka Bank Cases, 35 Nev. 86, under section 7005.

Cited, McComb v. District Court, 36 Nev. 420 (136 P. 563).

Cited, State v. Towers, 37 Nev. 104, 105 (139 P. 776; Ann. Cas. 1916D, 269).

Under this section, sections 7092, 7094, 7399, 7401, and 7101, it was held that an order dismissing an indictment on motion of the district attorney because of a clerical error therein did not bar a new prosecution, though no order was entered resubmitting the case to the grand jury. In *Re Hironymous*, 38 Nev. 194, 199 (147 P. 453).

See State v. Bachman, 41 Nev. 197, under section 7005.

7091. Objections, when deemed waived.

SEC. 241. If the motion to set aside the indictment or information is not made, the defendant is precluded from afterward taking the objections mentioned in the last section. *As amended, Stats. 1919, 422.*

7092. Motion, when heard—Proceedings when motion is denied or granted.

SEC. 242. The motion must be heard at the time it is made, unless for

good cause the court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. If the motion is granted, the court must order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail that his bail be exonerated; or, if he has deposited money instead of bail, that the same be refunded to him, unless it directs that the case be resubmitted to the same or another grand jury, or that an information be filed by the district attorney; *provided*, that after such order of resubmission the defendant may be examined before a magistrate, and discharged, or committed by him, as in other cases, if before indictment or information filed he has not been examined and committed by a magistrate or has not theretofore waived his preliminary examination. *As amended, Stats. 1919, 422.*

Cited, *State v. Towers*, 37 Nev. 105 (139 P. 776; Ann. Cas. 1916D, 269).

See *In Re Hironymous*, 38 Nev. 194, under section 7090.

7093. Defendant to remain in custody, or on bail, on resubmission of case.

SEC. 243. If the court directs the case to be resubmitted or an information to be filed, the defendant, if already in custody, must so remain unless he is admitted to bail; or if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information; but unless a new indictment is found or information filed before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed by the preceding section. *As amended, Stats. 1919, 422.*

See *State v. Bachman*, 41 Nev. 197, under section 7003.

7094. Order no bar to further prosecution.

SEC. 244. An order to set aside an indictment or information, as provided in this chapter, is no bar to a future prosecution for the same offense. *As amended, Stats. 1919, 422.*

See *In Re Hironymous*, 38 Nev. 194, under section 7090.

7097. Grounds for demurrer to indictment or information.

SEC. 247. The defendant may demur to the indictment or information when it appears upon the face thereof, either:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged by reason of its not being within the legal jurisdiction of the court, or if an information, that the court has no jurisdiction of the offense charged therein.

2. If an indictment, that it does not substantially conform to the requirements of sections 200 and 201 of this act; if an information, that it does not conform to sections 3 and 4 of an act entitled "An act providing for the prosecution and punishment of crimes, misdemeanors and offenses by information," approved March 24, 1913.

3. That more than one offense is charged except as provided in section 204 of this act.

4. That the facts stated do not constitute a public offense.

5. That the indictment or information contains matter, which, if true, would constitute legal justification or excuse of the offense charged, or other legal bar to the prosecution. *As amended, Stats. 1919, 423.*

7098. Form of demurrer.

SEC. 248. The demurrer must be in writing, signed by either the defendant or his counsel, and filed. It must distinctly specify the ground of objection to the indictment or information, or it must be disregarded. *As amended, Stats. 1919, 423.*

7101. Allowance of demurrer bar to another prosecution, when.

SEC. 251. If the demurrer is allowed, the judgment is final upon the indictment or information demurred to and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment or information, direct the case to be submitted to the same or another grand jury, or directs a new information to be filed; *provided*, that after such order or resubmission the defendant may be examined before a magistrate and discharged or committed by him, as in other cases. *As amended, Stats. 1919, 423.*

See *State v. Bachman*, 37 Nev. 94, under section 7005.

See *In Re Hironymous*, 38 Nev. 194, under section 7090.

7102. When defendant discharged, or bail exonerated.

SEC. 252. If the court does not permit the information to be amended nor direct that an information be filed or that the case be resubmitted, as provided in the preceding section, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him. *As amended, Stats. 1919, 423.*

7105. Objections, how taken.

SEC. 255. When the objections mentioned in section 247 appear upon the face of the indictment or information they can only be taken advantage of by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment or information, or that the facts stated do not constitute a public offense, may be taken at the trial under the plea of not guilty, and in arrest of judgment. *As amended, Stats. 1919, 424.*

Where the sufficiency of an indictment is questioned for the first time on appeal, it will be construed more liberally than in cases where the objection is properly made before trial. *State v. Kruger*, 34 Nev. 302, 303 (122 P. 483).

7106. Kind of pleas.

SEC. 256. There are four kinds of pleas to an indictment or information.

A plea of:

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offense charged which may be pleaded, either with or without the plea of not guilty.
4. Once in jeopardy. *As amended, Stats. 1919, 424.*

It is not necessary that a verdict to be sufficient should specify the crime charged, no more than it is necessary for a defendant to specify the crime charged when entering a plea of "guilty" or "not guilty." *Ex Parte Booth*, 39 Nev. 184, 187 (154 P. 933; L. R. A. 1916F, 960).

7107. Pleas, how entered, form of.

SEC. 257. Every plea must be oral and must be entered upon the minutes of the court in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."
2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."
3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the court of..... (naming it), rendered at..... (naming the place), on the..... day of....."

4. If he pleads once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place and court)." *As amended, Stats. 1919, 424.*

See *Ex Parte Booth*, 39 Nev. 184, under section 7106.

7108. Plea of guilty, how entered.

SEC. 258. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment or information against a corporation, in which case it may be put in by counsel. The court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted. *As amended, Stats. 1919, 424.*

7109. Plea of not guilty, puts in issue, what.

SEC. 259. The plea of not guilty puts in issue every material allegation of the indictment or information. *As amended, Stats. 1919, 424.*

7111. Plea of former acquittal, effect of.

SEC. 261. If the defendant was formerly acquitted on the ground of variance between the indictment or information and proof, or the indictment or information was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense without a judgment of acquittal, it is not an acquittal of the same offense. *As amended, Stats. 1919, 424.*

7112. Effect of acquittal on merits.

SEC. 262. Whenever the defendant is acquitted on the merits he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment or information on which the trial was had. *As amended, Stats. 1919, 425.*

7113. Effect of former acquittal or conviction of higher offense.

SEC. 263. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment or information, the conviction, acquittal or jeopardy is a bar to another indictment or information for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment or information. *As amended, Stats. 1919, 425.*

7114. Plea of not guilty, entered, when.

SEC. 264. If the defendant refuses to answer the indictment or information by a demurrer or plea, a plea of not guilty must be entered. *As amended, Stats. 1919, 425.*

7115. Grounds for change of venue.

SEC. 265. A criminal action prosecuted by indictment or information may be removed from the court in which it is pending, on application of the defendant or state, on the ground that a fair and impartial trial cannot be had in the county where the indictment or information is pending. *As amended, Stats. 1919, 425.*

7116. Application for removal, how made.

SEC. 266. The application for removal must be made in open court and in writing, verified by the affidavit of the defendant or district attorney, and a copy of said affidavit must be served on the adverse party, at least one day prior to the hearing of the application; *provided*, the application may be supported or opposed by other affidavits or other evidence, or other

witnesses may be examined in open court. Whenever the affidavit of the defendant shows that he cannot safely appear in person to make such application, because popular prejudice is so great as to endanger his personal safety, and such statement is sustained by other testimony, such application may be made by his attorney and must be heard and determined in the absence of the defendant, notwithstanding the charge then pending against him be a felony, and he has not, at the time of such application, been arrested or given bail, or been arraigned, or pleaded or demurred to the indictment or information. *As amended, Stats. 1919, 425.*

7123. In a prosecution for felony, where a witness was examined by the state for a few moments before accused was brought in, neither the court nor the prosecution noting his absence, and his attorneys, who were present, not objecting on account of his absence, the error will be considered harmless where the testimony was stricken out and later reintroduced without objection, particularly as the prosecution was had before the enactment of this section, which requires the defendant's presence at a trial for felony under the old laws which did not contain any such requirement. *State v. Clark, 36 Nev. 472, 477 (135 P. 1083).*

7125. Calendar to be prepared by clerk.

SEC. 275. The clerk must prepare a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment or information specifying opposite the title of each action, whether such action is for a felony, or a misdemeanor, and whether the defendant is in custody or on bail. *As amended, Stats. 1919, 426.*

7126. Similar section (Cutting, 4281) cited, *Ex Parte Tranmer, 35 Nev. 62 (126 P. 337; 41 L. R. A. (N.S.) 1095).*

7133. Under this section an objection to the panel, on the ground that the court having summoned a panel of jurors excused a portion of them and issued a second venire, is not well taken. *State v. Switzer, 38 Nev. 108, 111 (145 P. 925).*

7134. See *State v. Switzer, 38 Nev. 108*, under section 7133.

7145. Under this section, Rev. Laws, 7146, 7147, and 7150, it was held that a challenge "for actual bias" not stating any ground upon which the challenge rested or any reason on which it was made or the party against whom the jury was biased, was in form insufficient. *State v. Salgado, 38 Nev. 64, 71 (145 P. 919; 150 P. 764).*

7146. See *State v. Salgado, 38 Nev. 64*, under section 7145.

7147. See *State v. Salgado, 38 Nev. 64*, under section 7145.

7148. Grounds for challenge for implied bias.

SEC. 298. A challenge for implied bias may be taken for all or any of the following causes and for no other:

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged or on whose complaint the prosecution shall have been instituted, or to the defendant.

2. Standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, debtor and creditor; or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution shall have been instituted or in the employment of any such parties.

3. Being a party adverse to the defendant in a civil action, or having complaint against, or been accused by him, in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information.

5. Having served on a trial jury which has tried another person for the offense charged.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged.

9. If the offense charged is punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

10. Because he is, or within the year preceding has been, engaged or interested in carrying on any business, calling, or employment the carrying on of which is a violation of law, where the defendant is indicted or informed against for a like offense.

11. Because he has been a witness either for or against the defendant on the preliminary trial or before the grand jury. *As amended, Stats. 1919, 426.*

Cited, *State v. Salgado*, 38 Nev. 78 (145 P. 919; 150 P. 764).

7150. See *State v. Salgado*, 38 Nev. 64, under section 7145.

Challenges of certain jurors, which were not specific as required by this section, will not be considered on appeal. *State v. Milosovich*, 42 Nev. 269 (175 F. 139).

7159. Order of trial.

SEC. 309. The jury having been empaneled and sworn the trial shall proceed in the following order:

1. If the indictment or information be for a felony, the clerk must read it and state the plea of the defendant to the jury; in all other cases this formality may be dispensed with.

2. The district attorney or other counsel for the state must open the cause and offer the evidence in support of the charge.

3. The defendant or his counsel may then open the defense and offer his evidence in support thereof.

4. The parties may then respectively offer rebutting testimony only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original cause.

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, or unless a demand be made to have the jury instructed in advance of the argument as hereafter provided in this section, the counsel for the people must open and must conclude the argument.

6. The judge shall then charge the jury, if requested by either party; he may state the testimony and declare the law, but shall not charge the jury in respect to matters of fact; such charge shall be reduced to writing before it is given; and in no case shall any charge or instructions be given to the jury otherwise than in writing, unless by the mutual consent of the parties. If either party request it, the court must settle and give the instructions to the jury before the argument begins, but this shall not prevent the giving of further instructions which may become necessary by reason of the argument. *As amended, Stats. 1919, 427.*

The particular ground of an objection or exception must be brought to the attention of the trial court, consequently accused cannot complain on appeal that oral statements by the court, to the jury, intended to promote a verdict, are improper because not in writing, where that objection was not made below; it appearing that the only exception to the statements was on the ground that they were of such a nature as to prejudice accused. *State v. Clark*, 36 Nev. 472, 483 (135 P. 1083).

7160. Defendant deemed competent witness.

SEC. 310. In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offenses, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness, the credit to be given his testimony being left solely to the jury, under the instructions of the court; *provided*, that no special instruction shall be given relating exclusively to the testimony of the defendant, or particularly directing the attention of the jury to the defendant's testimony. *As amended, Stats. 1915, 191.*

In view of this section, as amended by Stats. 1915, 191, the court properly refused to instruct that defendant had testified, in his own behalf, and that this was his legal right, and that the jury were not permitted to reject his testimony merely because he was the accused. *State v. Blaha*, 39 Nev. 115, 119 (154 P. 78).

7161. Defendant not compelled to testify.

SEC. 311. Nothing herein contained shall be construed as compelling any such person to testify. No instruction shall be given relative to the failure of the person charged with the commission of crime or offense to testify, except, upon the request of the person so charged, the court shall instruct the jury that, in accordance with a right guaranteed by the constitution, no person can be compelled, in a criminal action, to be a witness against himself. *As amended, Stats. 1915, 192.*

In a prosecution for permitting gambling on defendant's premises, a statement by the district attorney in argument, "Why didn't the defendant call any witnesses to the stand? Why didn't he put his brother on the stand, his attendant? I will tell you why; he didn't dare do it." was not objectionable as a reference to defendant's failure to testify in his own behalf. *State v. Williams*, 35 Nev. 276, 283 (129 P. 317).

7162. Argument may be restricted.

SEC. 312. If the indictment or information be for an offense punishable with death, two counsel on each side may argue the case to the jury, but in such case, as well as in all others, the counsel for the state must open and conclude the argument. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side. *As amended, Stats. 1919, 427.*

7163. Notwithstanding this section, an accused person, relying on the defense of insanity, has the burden of proof, and must satisfy the jury by preponderance of the evidence that he is insane, there being a presumption of sanity. *State v. Nelson*, 36 Nev. 403, 413 (136 P. 377).

7165. Under this section, the court, having given the definition of "reasonable doubt" therein contained, did not err in refusing accused's requested instruction on reasonable doubt. *State v. Carey*, 34 Nev. 310, 313 (122 P. 868).

7169. Discharged defendant may testify for codefendant.

SEC. 319. When two or more persons are included in the same indictment or information and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it shall order him to be discharged before the evidence is closed that he may be a witness for his codefendant. *As amended, Stats. 1919, 427.*

7173. Conspiracy—Overt acts to be proved.

SEC. 323. Upon a trial for conspiracy in a case where an overt act shall be necessary to constitute the offense, the defendant shall not be convicted unless one or more overt acts shall be expressly alleged in the indictment or information, nor unless one of the acts alleged shall have been proved; but other overt acts not alleged may be given in evidence. *As amended, Stats. 1919, 428.*

7180. Where there was evidence from which the jury might have concluded that the complaining witness was an accomplice, it was error to refuse to charge that, if such witness was willing that the offense be committed on him, then, in the absence of other evidence than the testimony and acts of witness to connect accused with the offense charged, accused must be acquitted, since by this section a conviction cannot be had on the uncorroborated testimony of an accomplice. *State v. Carey*, 34 Nev. 309, 311 (122 P. 868).

In a prosecution for permitting unlawful gambling in the defendant's place of business, evidence that other unlawful games were played there, and that the game in question, as testified to by the participants and other witnesses, was carried on with the door locked and attended by defendant's brother, furnished sufficient corroboration of the testimony of accomplices required by this section to sustain a conviction. *State v. Williams*, 35 Nev. 276, 282, 311 (129 P. 317).

The general rule of this section is to be applied where the sole witness against the defendant on his preliminary examination is an accomplice, and a commitment on his uncorroborated testimony is not on reasonable or probable cause. In *Re Oxley and Mulvaney*, 38 Nev. 380, 386 (149 P. 992).

Under the provisions of this section and Rev. Laws, 7451, a coconspirator may be a competent witness against his coconspirators. *State v. Beck*, 42 Nev. 215 (174 P. 715).

7182. Procedure when higher offense is shown by evidence.

SEC. 332. If it appears by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment or information, the court may direct the jury to be discharged, and all proceedings on the indictment or information to be suspended, and may order the defendant to be committed, or continued on, or admitted to bail, to answer any new indictment or information which may be found, or filed against him for the higher offense. *As amended, Stats. 1919, 428.*

7183. Procedure if higher offense ignored.

SEC. 333. If an indictment for the higher offense be dismissed by the grand jury, or be not found at its next session, or if an information be not filed before the next session of the grand jury, the court shall again proceed to try the defendant on the original indictment or information. *As amended, Stats. 1919, 428.*

7184. Want of jurisdiction—Discharge of jury.

SEC. 334. The court may also direct the jury to be discharged when it appears that it has not jurisdiction of the offense, or that the facts as charged in the indictment or information do not constitute an offense punishable by law. *As amended, Stats. 1919, 428.*

7186. Defendant held when offense committed in another county.

SEC. 336. If the offense was committed within the jurisdiction of another county of this state, the court may direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest, or, if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county; and, if not sooner arrested thereon, will attend at the office of the sheriff of the county, where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the indictment or information, and of all the papers filed in the action, to the district attorney of the proper county, the expenses of which transmission are chargeable to that county. *As amended, Stats. 1919, 428.*

7188. Facts not constituting an offense—Defendant discharged or case resubmitted.

SEC. 338. If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged, or if admitted to bail, that his bail be exonerated, or if he has deposited money instead of bail, that the money deposited be refunded to him, unless, in the opinion of the court, a new indictment or information can be framed, upon which the defendant can be legally convicted, in which case it may direct the district attorney to file a new information, or (if the defendant has not been committed by a magistrate, or waived a preliminary examination) direct that the case be submitted to the same or another grand jury; and the same proceedings must be had thereon as are prescribed in section 243; *provided*, that after such order or submission the defendant may be examined before a magistrate, and discharged or committed by him as in other cases. *As amended, Stats. 1919, 429.*

7196. Jury determines law and facts in libel.

SEC. 346. On a trial for libel the jury shall have the right to determine the law and the facts. *As amended, Stats. 1919, 429.*

In consideration of Rev. Laws, 6428, this section, Rev. Laws, 7216, 7218, 7221, and 7222, in a prosecution for libel where the verdict was: "We the jury find the defendant guilty of a gross misdemeanor," it was held that, as the jury were entitled to find the grade of the offense, and as the whole record might be looked to, the verdict was not so indefinite that a judgment entered thereon was void; such verdict indicating the degree of the offense of which the accused was convicted. *Ex Parte Booth*, 39 Nev. 184, 190 (154 P. 933; L. R. A. 1916F. 960).

7197. Court decides law; jury decides fact.

SEC. 347. On a trial for any other offense than libel, the questions of law are to be decided by the court, saving the right of the defendant to except, and questions of fact by the jury, and, although the jury have the power to find a general verdict which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court. *As amended, Stats. 1919, 429.*

7208. Similar section (Cutting, 4341) cited, *State v. Luhano*, 31 Nev. 279 (102 P. 260).

7210. Discharge without verdict—Retrial.

SEC. 360. In all cases where a jury is discharged or prevented from giving a verdict by reason of any accident or other cause, except where the defendant is discharged during the progress of the trial or after the cause is submitted to them, the cause may be again tried. *As amended, Stats. 1919, 429.*

7214. Defendant must be present at verdict for felony.

SEC. 364. If the indictment or information be for a felony, the defendant must, before a verdict, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence. *As amended, Stats. 1919, 429.*

In a prosecution for felony, where a witness was examined by the state for a few moments before accused was brought in, neither the court nor the prosecution noting his absence, and his attorneys, who were present, not objecting on account of his absence, the error will be considered harmless where the testimony was stricken out and later reintroduced without objection, particularly as the prosecution was had before the enactment of Rev. Laws, 7123, which requires the defendant's presence at a trial for felony, under the old law, which did not contain any such requirement. *State v. Clark*, 36 Nev. 472, 477 (135 P. 1083).

7216. Forms of verdict.

SEC. 366. A verdict upon a plea of not guilty shall be either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment or information. Upon a plea of a former conviction or acquittal for the same offense, it shall be either "for the state" or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment or information and the proof, the verdict must be "not guilty by reason of variance between the indictment or information and proof." *As amended, Stats. 1919, 429.*

See Ex Parte Booth, 39 Nev. 184, under section 7196.

7218. See Ex Parte Booth, 39 Nev. 184, under section 7196.

7219. May be found guilty of any offense included in one charged.

SEC. 369. In all cases the defendant may be found guilty of any offense, the commission of which is necessarily included in that with which he is charged, or may be found guilty of an attempt to commit the offense charged. *As amended, Stats. 1919, 430.*

7221. See Ex Parte Booth, 39 Nev. 184, under section 7196.

7222. See Ex Parte Booth, 39 Nev. 184, under section 7196.

7227. Exceptions may be taken by defendant, how.

SEC. 377. On the trial of an indictment or information exceptions may be taken by the defendant to a decision of the court upon a matter of law in any of the following cases:

1. In disallowing a challenge to the panel of the jury, or to an individual juror;

2. In admitting or rejecting witnesses or testimony, on the trial of a challenge to a juror for actual bias;

3. In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion. *As amended, Stats. 1919, 430.*

7231. What deemed excepted to by either party.

SEC. 381. The decision of the court in a criminal action or proceeding upon a matter of law shall be deemed excepted to by either party in the following cases:

1. In granting or refusing a motion to set aside an indictment or information;

2. In allowing or disallowing a demurrer to an indictment or information;

3. In granting or refusing a motion in arrest of judgment;

4. In granting or refusing a motion for a new trial;

5. In making or refusing to make an order after judgment affecting any substantial right of the parties. *As amended, Stats. 1919, 430.*

7232. New trial defined—Effect of granting.

SEC. 382. A new trial is a reexamination of the issue in the same court before another jury, after a verdict has been given. It places the parties in the same condition as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument, nor be pleaded in bar of any conviction which might have been had under the indictment or information. *As amended, Stats. 1919, 430.*

7234. Causes for granting new trial.

SEC. 384. The court in which a trial is had upon the issue of fact, has

power to grant a new trial where a verdict has been rendered against the defendant upon his application, in the following cases only:

1. When the trial has been had in his absence, if the indictment be for felony;

2. When the jury has received any evidence out of court other than that resulting from a view, as provided in section 341;

3. When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and due consideration of the case;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial;

6. When the verdict is contrary to law or evidence, but no more than two new trials shall be granted for this cause alone;

7. When new evidence shall have been discovered material to the defendant and which he could not, with reasonable diligence, have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable. *As amended, Stats. 1917, 423.*

An order granting a new trial to accused for insufficiency of evidence to support a conviction will not be disturbed on appeal, except in case of abuse of discretion. *State v. Bauer, 34 Nev. 305, 306 (122 P. 76).*

A motion for a new trial may be heard by the trial court without a bill of exceptions, statement, or affidavit, when it is based on matters which transpired before, and are within the knowledge of the court. *Id.*

A motion for a new trial under this section may be determined without any bill of exceptions or statement or affidavit. *State v. Orr, 34 Nev. 297, 301 (122 P. 73).*

7235. *Cited, State v. Orr, 34 Nev. 301 (122 P. 73).*

7238. Arrest of judgment defined—Grounds for.

SEC. 388. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal or once in jeopardy. It may be founded on any of the defects in the indictment or information mentioned in section 247, unless the objection shall have been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment. *As amended, Stats. 1919, 431.*

7240. *Idem*—Effect of allowance.

SEC. 390. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found or information filed. *As amended, Stats. 1919, 431.*

7241. Procedure after allowance of arrest of judgment.

SEC. 391. If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment or information can be framed upon which he may be convicted, the court may order him to be recommitted to the officers of the proper county, or admitted to bail anew to answer the new indictment or information. If the evidence show him guilty of another offense, he shall be committed or held thereon, and in

neither case shall the verdict be a bar to another prosecution. But if no evidence appear sufficient to charge him with any offense, he shall, if in custody, be discharged; or, if admitted to bail, his bail shall be exonerated; or, if money has been deposited instead of bail, it shall be refunded to the defendant, and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment or information was founded. *As amended, Stats. 1919, 431.*

7244. Cited, *Ex Parte Booth*, 39 Nev. 187 (154 P. 933; L. R. A. 1916F, 960).

7245. Cited, *State v. Clark*, 36 Nev. 477 (135 P. 1083).

7251. Appearance for judgment—Defendant asked to show cause.

SEC. 401. When the defendant appears for judgment, he shall be informed by the court, or by the clerk under its direction, of the nature of the charge against him and of his plea, and the verdict, if any there are, and shall be asked whether he have any legal excuse to show why judgment should not be pronounced against him. *As amended, Stats. 1919, 431.*

7256. See *Ex Parte Tranmer*, 35 Nev. 56, under section 6908.

7259. Cited, *Ex Parte Melosevich*, 36 Nev. 72 (133 P. 57).

7260. Indeterminate sentences, how fixed.

SEC. 410. Whenever any person shall be convicted of any felony for which no fixed period of confinement is imposed by law, the court shall, in addition to any fine or forfeiture which he may impose, direct that such person be confined in the state prison, for an indeterminate term limited only by the minimum and maximum term of imprisonment prescribed by law for the offense of which such person shall be convicted; and where no minimum term of imprisonment is prescribed by law, the court shall fix the minimum term in his discretion at not less than one year nor more than five years, and where no maximum term of imprisonment is prescribed by law, the court shall fix such maximum term of imprisonment. Immediately after the rendition of judgment in such case the district judge who presided at the trial and the district attorney who prosecuted the case shall transmit to the secretary of the board of pardons and parole commissioners a written statement of facts within their knowledge which may aid said board in the exercise of the powers conferred by section 411 of this act, and may include in such statement such comments as they may deem pertinent. *As amended, Stats. 1913, 274.*

See *Ex Parte Melosevich*, 36 Nev. 67, under section 6638.

See *State v. Enkhous*, 40 Nev. 2, under section 6146.

7261. See *Ex Parte Melosevich*, 36 Nev. 67, under section 6638.

7263. Entry of judgment—Record of action, what to include.

SEC. 413. When judgment upon a conviction is rendered, the clerk shall enter the same in the minutes, stating briefly the offense for which the conviction has been had, and shall, within five days, annex together and file the following papers, which shall constitute the record of the action:

1. A copy of the minutes of any challenge which may have been interposed by the defendant to the panel of the grand jury, or to any individual grand juror, and the proceedings thereon;

2. The indictment or information and a copy of the minutes of the plea or demurrer;

3. A copy of the minutes of any challenge which may have been interposed to the panel of the trial jury, or of any individual juror, and the proceedings thereon;

4. A copy of the minutes of the trial;

5. A copy of the minutes of the judgment;

6. The decision of the court upon matters of law deemed excepted to, if such decision is in writing, and a copy of the minutes showing any decision deemed excepted to;

7. Any written charges given or refused by the court, with the endorsements thereon;

8. The affidavits and counter affidavits, if any, used on the hearing of a motion for a new trial;

9. The bill of exceptions, if any, when settled, shall be attached to the foregoing and become a part of the record. *As amended, Stats. 1919, 431.*

7293. Effect of appeal by state—Entry of judgment on reversal.

SEC. 443. An appeal taken by the state shall in no case stay or affect the operation of a judgment in favor of the defendant; *provided*, if the appeal by the state is from an order sustaining a demurrer to an indictment or information, or granting a motion to set aside an indictment or information, and upon such appeal said order is reversed, the defendant shall thereupon be liable to arrest and trial upon said indictment or information. If the appeal by the state be from an order allowing a motion in arrest of judgment, or granting a motion for a new trial, and upon appeal such order is reversed, the trial court shall enter judgment against the defendant. *As amended, Stats. 1919, 432.*

7294. Under this section and Rev. Laws, 7314, the element of probable cause for the appeal from a conviction and judgment of imprisonment is essential, and over which judicial discretion may be exercised on the question of bail. *State v. McFarlin*, 41 Nev. 105, 106, 111 (167 P. 1011).

This section is in the nature of a supersedeas, whereby the execution of the judgment of conviction is stayed pending appeal, and, standing alone, has nothing to do with the question of admission to bail, which is governed by Rev. Laws, 7314. *Id.*

Under this section and Rev. Laws, 7314, where petitioner's appeal from a conviction for embezzlement sentencing him to imprisonment was properly taken in good faith, and it appears that newly discovered evidence, which was not available at or during the trial, is now available, and is of such a nature as might reasonably be expected to raise a reasonable doubt of guilt, petitioner will be admitted to bail by the supreme court. *Id.*

7295. Time for transmitting record and notice.

SEC. 445. Upon the appeal being taken, the clerk with whom the notice of appeal is filed, must, within ten days thereafter, without charge, transmit to the clerk of the supreme court the notice of appeal and the record in said action, and if the appeal be by the state from an order sustaining a demurrer to or setting aside an indictment or information, or allowing a motion for a new trial or motion in arrest of judgment, the clerk shall within said time likewise prepare and forward the indictment or information, demurrer, order of the court sustaining said demurrer, and notice of appeal, which shall constitute the record on appeal. *As amended, Stats. 1919, 432.*

7299. Where no briefs are filed, and counsel for accused fails to appear and argue the case after notice, the supreme court may, under this section, affirm the judgment without reviewing the assignments of error. *State v. Jorme*, 34 Nev. 307 (122 P. 483).

7302. Cited, *Brown v. Dunn*, 35 Nev. 177 (127 P. 81).

Where evidence showed conclusively and was undisputed that the accused killed deceased with a knife, the admission of his statements as to his possession of the knife by which deceased was killed, even if erroneous because he was not warned that they might be used against him, did not require a reversal in view of this section and Rev. Laws, 7469. *State v. Mircovich*, 35 Nev. 485, 489, 490 (130 P. 765).

Cited, *State v. Scott*, 37 Nev. 450, 451 (142 P. 1053).

Cited, *Ex Parte Booth*, 39 Nev. 199 (154 P. 933; L. R. A. 1916F, 960).

7306. Entry of judgment—Papers remitted to court below.

SEC. 456. When the judgment of the supreme court shall have been given, it must be entered on the minutes, and a certified copy of the entry remitted to the clerk of the court from which the appeal shall have been taken. When the supreme court reverses or modifies the judgment of an inferior court on appeal, the clerk of the supreme court shall return to said inferior court with the remittitur therein the papers transmitted to the supreme court on appeal. *As amended, Stats. 1919, 247.*

7313. Admission to bail before conviction.

SEC. 463. Before conviction, a defendant may be admitted to bail:

1. For his appearance before a magistrate, on the examination of the charge, before being held to answer;

2. To appear at the court to which the magistrate is required to return the depositions and statement upon the defendant being held to answer after examination;

3. After indictment or information, either before the bench warrant is issued for his arrest, or upon an order of the court committing or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment or information in the court in which it is found, or filed, or to which it may be sent or removed for trial. *As amended, Stats. 1919, 432.*

7314. See *State v. McFarlin*, 41 Nev. 105, under section 7294.

7324. Bail on bench warrant—Form of undertaking.

SEC. 474. When the defendant has been arrested upon a bench warrant, the bail must be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An indictment having been found (or an information having been filed), on the.....day of....., A. D. 19...., in the district court of thejudicial district of the State of Nevada, in and for the county of.....(as the case may be), charging A. B. with the crime of (indicating it generally), and he having been duly admitted to bail in the sum of.....dollars, we, C. D. and E. F. (stating their place of residence), hereby undertake that the above-named A. B. shall appear and answer the indictment or information above mentioned in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and processes of the court, and, if convicted, shall appear for judgment and render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the State of Nevada the sum of.....dollars (inserting the sum in which the defendant is admitted to bail). *As amended, Stats. 1919, 433.*

7326. Cited, *State v. McFarlin*, 41 Nev. 107 (167 P. 1011).

7340. Recommitted after bail.

SEC. 490. The court to which the committing magistrate shall return the depositions and statement, or in which an indictment or information, or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered on its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section 486;

2. When it satisfactorily appears to the court that his bail, or either of them, are dead, or insufficient, or have removed from the state;

3. Upon an indictment being found or information filed in the cases provided in section 233. *As amended, Stats. 1919, 433.*

7341. Order of recommitment, what to contain.

SEC. 491. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any sheriff, constable, marshal, policeman, or other peace officer within the state, and committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the information was filed, or the conviction was had, as the case may be, to be detained until legally discharged. *As amended, Stats. 1919, 434.*

7345. Idem—Who may take bail.

SEC. 495. When the defendant is admitted to bail, the bail may be taken in the amount specified in the order, by any magistrate in the county having authority in a similar case to admit to bail upon the holding of the defendant to answer before indictment or information, or by any other magistrate to be designated by the court. *As amended, Stats. 1919, 434.*

7346. Form of undertaking on recommitment.

SEC. 496. When bail is taken upon the recommitment of the defendant, the undertaking shall be in substantially the following form:

An order having been made on the.....day of....., A. D. 19....., by the court (naming it), that A. B. be admitted to bail in the sum of \$....., in an action pending in that court against him, in behalf of the State of Nevada, upon a (presentment, indictment, information, or appeal, as the case may be), we, C. D. and E. F., of (stating their place of residence), hereby undertake that the above-named A. B. shall appear in that or any other court in which his appearance may be lawfully required, upon that (presentment, indictment, information, or appeal, as the case may be), and shall at all times render himself amenable to its orders and processes, and appear for judgment, and surrender himself in execution thereof; or, if he fail to perform any of these conditions, that we will pay to the State of Nevada the sum of \$..... (inserting the sum in which the defendant is admitted to bail). *As amended, Stats. 1919, 434.*

7349. Who may issue subpoena—Order for prisoner as witness.

SEC. 499. A magistrate before whom a complaint is laid, or a clerk of the district court before which a proceeding by indictment or information is being tried, may issue subpoenas subscribed by them for witnesses within the State of Nevada, either on behalf of the state or of the defendant; and when it is necessary to have a person imprisoned in the state prison brought before any district court, or a person imprisoned in the county jail brought before a district court sitting in another county, an order for that purpose may be made by the district court, or district judge, at chambers, and executed by the sheriff of the county when it is made; such order can only be made upon motion of a party upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. *As amended, Stats. 1919, 434.*

7351. District attorney may issue subpoena.

SEC. 501. The district attorney may in like manner issue subpoenas subscribed by him, for witnesses within the state, in support of an indictment or information, to appear before the court at which it is to be tried. *As amended, Stats. 1919, 435.*

7352. Clerk to issue blank subpoenas to defendant.

SEC. 502. The clerk of the court at which an indictment or information is to be tried shall, at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as clerk, for witnesses within the state, as may be required by the defendant. *As amended, Stats. 1919, 435.*

7365. Witnesses for defense examined conditionally.

SEC. 515. When a defendant has been held to answer a charge for a public offense, he may, either before or after indictment or information, have witnesses examined conditionally on his behalf, as prescribed in this chapter and not otherwise. *As amended, Stats. 1919, 435.*

7372. Stay of trial may be granted, when.

SEC. 522. If application for a commission is granted, the court or judge may insert in the order therefor a direction that the trial of the indictment or information be stayed for a specified time, reasonably sufficient for the execution and return of the commission. *As amended, Stats. 1919, 435.*

7386. Sanity of defendant, when questioned, decided, how.

SEC. 536. When an indictment or information is called for trial, or upon conviction the defendant is brought up for judgment, if doubt shall arise as to the sanity of the defendant, the court shall order the question to be submitted to a jury that must be drawn and selected as in other cases. *As amended, Stats. 1919, 435.*

7387. Trial suspended until question of sanity settled.

SEC. 537. The trial of the indictment or information, or the pronouncing of the judgment, as the case may be, shall be suspended until the question of insanity shall be determined by the verdict of the jury. *As amended, Stats. 1919, 435.*

7388. Trial of question of insanity, method of procedure.

SEC. 538. The trial of the question of insanity shall proceed in the following form:

1. The counsel for the defendant shall open the case and offer evidence in support of the allegations of insanity;
2. The counsel for the state shall open their case and offer evidence in support thereof;
3. The parties may then respectively offer rebutting testimony only, unless the court for good reason in furtherance of justice, permit them to offer evidence upon their original cause;
4. When the evidence is concluded, unless the case is submitted to the jury, on either or both sides, without argument, the counsel for the state must commence, and the defendant, or his counsel, may conclude the argument to the jury;
5. If the indictment or information be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side;
6. The court shall then charge the jury, stating to them all matters of law necessary for their information in rendering a verdict. *As amended, Stats. 1919, 436.*

7389. Procedure on finding defendant sane.

SEC. 539. If the jury find that the defendant is sane, the trial of the indictment or information shall proceed, or judgment may be pronounced, as the case may be. *As amended, Stats. 1919, 436.*

7395. Court may order dismissal of prosecution, when.

SEC. 545. When a person has been held to answer for a public offense, if an indictment be not found or an information filed against him at the next session of the court at which he is held to answer, and at which a meeting of the grand jury is held, the court shall order the prosecution to be dismissed, unless good cause to the contrary be shown. *As amended, Stats. 1919, 436.*

7396. Defendant dismissed if not tried at next session of court.

SEC. 546. If a defendant, whose trial has not been postponed upon his application, is not brought to trial at the next session of the court at which the indictment or information is triable, after the same is found or filed, the court shall order the indictment or information to be dismissed, unless good cause to the contrary be shown. *As amended, Stats. 1919, 436.*

When accused, indicted under two indictments for a double murder, obtains a change of venue in the case of one indictment, but the other indictment was not removed, and at the next term of court the latter case was called for trial, and subsequently removed to another county on a change of venue, accused could not complain that he was not given a speedy trial under such indictment, as guaranteed by the constitution and this section. *Ex Parte Tranmer, 35 Nev. 56, 79 (126 P. 337; 41 L. R. A. (N.S.) 1095).*

The statute guaranteeing a speedy trial does not apply while accused is in prison serving a sentence on another charge; but accused, serving such sentence, may demand that he be tried on all indictments against him, and a refusal to try him may enable him to invoke the statute. *Id.*

7397. Action continued, when—Discharge, when.

SEC. 547. If the defendant is not charged or tried as provided in the last two preceding sections, and sufficient reason therefor shown, the court may order the action to be continued from time to time and in the meantime may discharge the defendant from custody, on his own recognizance, or on the recognizance of bail, for his appearance to answer the charge at the time to which the action is continued. *As amended, Stats. 1919, 436.*

7399. Dismissal on motion of court or district attorney.

SEC. 549. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order any action after indictment found or information filed to be dismissed; but in such cases the reasons of the dismissal shall be set forth in the order, which must be entered on the minutes. *As amended, Stats. 1919, 437.*

See *State v. Towers, 37 Nev. 94*, under section 7005.

See *In Re Hironymous, 38 Nev. 194*, under section 7090.

7401. See *State v. Towers, 37 Nev. 94*, under section 7005.

See *In Re Hironymous, 38 Nev. 194*, under section 7090.

7409. Corporation must answer same as natural person.

SEC. 559. Whenever an indictment is found or an information filed against a corporation, it must be summoned to appear as provided in the civil practice act, or as provided in this chapter for the service of a summons. The corporation may appear by counsel. If it does not appear, a plea of not guilty must be entered. In either case, proceedings thereupon must be had as if the defendant were a natural person. *As amended, Stats. 1919, 437.*

7414. Defective title of affidavit not to invalidate.

SEC. 564. It shall not be necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment found or information filed or upon an appeal; but if made without a title, or with an erroneous

title, it shall be as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, information, or appeal in which it is made. *As amended, Stats. 1919, 437.*

7444. Commissioners to provide reasonable expenses.

SEC. 594. Whenever any fugitive from justice shall be returned to this state under interstate or international extradition, and shall be delivered to the sheriff of the county in which the fugitive is charged with having committed a crime against the laws of this state, the board of county commissioners of every such county is authorized to provide for the payment by the county of such reasonable sum of money to defray the expenses of the extradition and delivery aforesaid as the board may deem just and reasonable; *provided*, that a majority of the members of the board of county commissioners shall have consented, by order of the board entered on its minutes, to the extradition of the fugitive before extradition proceedings are instituted, and not otherwise. *As amended, Stats. 1917, 25.*

An Act to provide for the extradition of persons of unsound mind, and to make uniform the laws of the states which enact the same.

Approved March 20, 1917, 232

Name of act.

SECTION 1. This act may be cited as the Uniform Act for the Extradition of Persons of Unsound Mind.

Definitions.

SEC. 2. The terms "flight" and "fled," as used in this act, shall be construed to mean any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter mentioned may have been instituted and are still pending, with the effect of avoiding, impeding, or delaying the action of the court in which such proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was if he was then under detention by law as a person of unsound mind and subject to detention. The word "state," wherever used in this act, shall include states, territories, districts, and insular and other possessions of the United States. As applied to a request to return any person within the purview of this act to or from the District of Columbia, the words "Executive Authority," "Governor," and "Chief Magistrate," respectively, shall include a justice of the supreme court of the District of Columbia and other authority.

Such persons may be extradited, when.

SEC. 3. A person alleged to be of unsound mind found in this state, who has fled from another state, in which at the time of his flight:

(a) He was under detention by law in a hospital, asylum, or other institution for the insane as a person of unsound mind; or

(b) He had been theretofore determined by legal proceedings to be of unsound mind, the finding being unreversed and in full force and effect, and the control of his person having been acquired by a court of competent jurisdiction of the state from which he fled; or

(c) He was subject to detention in such state, being then his legal domicile (personal service of process having been made) based on legal proceedings there pending to have him declared of unsound mind;—shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed thereto.

Governor to act.

SEC. 4. Whenever the executive authority of any state demands of the

executive authority of this state any fugitive within the purview of section 3 and produces a copy of the commitment, decree, or other judicial process and proceedings, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled, with an affidavit made before a proper officer showing the person to be such a fugitive, it shall be the duty of the executive authority of this state to cause him to be apprehended and secured, if found in this state, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the apprehension, the fugitive may be discharged. All costs and expenses incurred in the apprehending, securing, maintaining, and transmitting such fugitive to the state making such demand shall be paid by such state. Any agent so appointed who received the fugitive into his custody shall be empowered to transmit him to the state from which he has fled. The executive authority of this state is hereby vested with the power, on the application of any person interested, to demand the return to this state of any fugitive within the purview of this act.

Limitation.

SEC. 5. Any proceeding under this act shall be begun within one year after the flight referred to in this act.

Interpretation of act.

SEC. 6. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

7451. One who was jointly indicted with accused for murder, and on previous separate trial had been convicted, was a competent witness for the state in a murder trial under Rev. Laws, 5419, defining witnesses, and this section, applying section 5419 to similar actions. *State v. Tranmer*, 39 Nev. 143, 154, 155 (154 P. 80).

Cited, *State v. Scott*, 37 Nev. 447 (142 P. 1053).

Cited, *State v. Tranmer*, 39 Nev. 155 (154 P. 80).

The testimony of a coconspirator that defendant informed the witness that he and another were planning to rob a stage; that defendant later unqualifiedly stated that the robbery had been committed and the stage driver murdered, was admissible. *State v. Beck*, 42 Nev. 215 (174 P. 715).

Under this section, there is no rule precluding a witness from voluntarily testifying either for or against an accomplice, though called as a witness by the prosecuting attorney. *State ex rel. Esser v. District Court*, 42 Nev. 218, 227 (174 P. 1024, 1026).

7454. Cited, *State v. Scott*, 37 Nev. 447 (142 P. 1053).

7459. See *Ex Parte Tranmer*, 35 Nev. 56, under section 6908.

7466. Costs when criminal action removed before trial.

SEC. 616. In every case where a criminal action may have been or shall be removed before trial, the cost accruing upon such removal and trial shall be a charge against the county in which the cause of the indictment or information occurred. *As amended, Stats. 1919, 437.*

7467. Clerk to certify costs to auditor.

SEC. 617. The clerk of the county to which such action is or may be removed, shall certify the amount of said costs to the auditor of the county in which the indictment was found, or the information filed, which shall be examined, allowed, and paid as other county charges. *As amended, Stats. 1919, 437.*

7468. Superseding of a criminal law no bar to punishment unless specifically expressed.

SEC. 618. The superseding of any law creating a criminal offense shall not be held to constitute a bar to the indictment or information and punishment of a crime already committed, or to bar the trial and punishment of a crime where an indictment or information has been already found, for a violation of the law so superseded, unless the intention to bar such indictment, information and punishment, or trial and punishment where an indictment has been already found or an information filed, is expressly declared in the superseding act. *As amended, Stats. 1919, 437.*

7469. Cited, *Brown v. Dunn*, 35 Nev. 177 (127 P. 81).

See *State v. Mircovich*, 35 Nev. 485, under section 7302.

Cited, *State v. Scott*, 37 Nev. 450, 451 (142 P. 1053).

Cited, *Ex Parte Booth*, 39 Nev. 199 (154 P. 933; L. R. A. 1916F, 960).

7472. The defect that a complaint, charging the relator with a misdemeanor, was insufficient because purporting to be made upon information and belief, instead of upon positive knowledge, was not jurisdictional, and was waived by relator by pleading to the complaint without making an objection upon the ground assigned. *Ex Parte Murray*, 39 Nev. 351, 355 (157 P. 647).

7482. Cited, *State v. Clark*, 36 Nev. 477 (135 P. 1083).

7513. Under this section a notice of appeal was addressed to the district attorney and to an acting justice of the peace, stating that defendant intended to appeal, and did thereby appeal, from a conviction in the justice court of receiving and buying personal property from an intoxicated person, and from the judgment and sentence of the justice court imposing a fine, and in the alternative an imprisonment, upon questions of both law and fact. Held, that the notice of appeal was sufficient. *Jensen v. District Court*, 40 Nev. 135, 138 (161 P. 162).

7514. Cited, *Jensen v. District Court*, 40 Nev. 139 (161 P. 162).

7516. Cited, *Jensen v. District Court*, 40 Nev. 138 (161 P. 162).

7517. Cited, *Ex Parte Murray*, 39 Nev. 357, 358 (157 P. 647).

7518. Cited, *Ex Parte Murray*, 39 Nev. 357-359 (157 P. 647).

7544. Summoning jurors—Number of.

SEC. 3. When a justice of the peace, acting as coroner, or his deputy, has been informed that a person has been killed, or committed suicide, or has suddenly died under such circumstances as to afford reasonable ground to suspect that the death has been occasioned by unnatural means, he shall go to the place where the body is and summon three persons qualified by law to serve as jurors, to appear before him forthwith at the place where the body is, to inquire into the cause of the death. *As amended, Stats. 1919, 60.*

7546. Oath of jurors.

SEC. 5. When the jurors attend, they shall be sworn by the justice of the peace, acting as coroner, or deputy, to inquire who the person was, and when, where and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon according to the evidence. *As amended, Stats. 1919, 60.*

7550. Where the testimony of a witness at a coroner's inquest was reduced to writing in accordance with this section, but the record was not read by or to the witness, and was not filed by him, a transcript thereof is not admissible to impeach the testimony of such witness in a subsequent case growing out of the death investigated by a coroner. *New York L. I. Co. v. Neasham*, 250 F. 787, 788.

STATE PRISON AND JAILS

7600. Additional allowances.

SEC. 4. In addition to the time-off for good behavior from the term of sentence now allowed by law, convicts so detailed for work upon the public roads shall be allowed ten days' time-off for each month's faithful work and compliance with such rules and regulations; and in addition thereto, each convict so detailed shall be allowed the sum of ten cents for each day's labor, and which shall accumulate as a fund to be paid the convict on the termination of his sentence, or on his release by pardon or parole, and which shall be in addition to the sum of money ordinarily given discharged convicts; *provided*, that, on the petition of any such convict, said board, in its discretion, may pay out from any sum so to the credit of any convict a portion or all thereof, in support of the dependent wife, children or parent of such convict in distress. *As amended, Stats. 1913, 577.*

An Act concerning minor inmates of the Nevada state prison.

Approved March 18, 1915, 224

Minors may be sent to school of industry.

SECTION 1. The board of parole commissioners of this state is authorized, in its discretion, to transfer to the Nevada school of industry any minor persons who are now, or hereafter may be, inmates of the Nevada state prison.

An Act authorizing and relating to the employment of convicts on the state prison farm, and to provide a fund in the state treasury for the payment thereof.

Approved March 17, 1913, 158

Convicts on farm—Proviso.

SECTION 1. The board of state prison commissioners is hereby authorized and directed to detail for work on the state prison farm any male convict in the state prison who, on the recommendation of the warden, and in the opinion of said board, may be properly so detailed, excepting prisoners under sentence of death; *provided*, that such detail shall be voluntary on the part of the convict, and shall not be caused by any form of compulsion.

Same rules as for prisoners on road work.

SEC. 2. Such detail of convicts for work on the prison farm shall be regulated according to the provisions of law provided for the employment of convicts on the public highways of the state.

SEC. 3. [Carrying appropriation; omitted.]

DIGEST
OF THE
DECISIONS OF THE SUPREME COURT
OF
NEVADA

**Covering All Cases in Volumes Thirty-Three to Forty-Two, Inclusive,
of Nevada Reports and All Federal Cases Originating in
Nevada as Contained in the Federal Reporter, Vol-
umes One Hundred and Ninety to Two
Hundred and Fifty-Six, Inclusive**

WITH

**A Table of Cases Showing Where the Cases Are Reported
and Where Digested in This Digest**

By

GEO. B. THATCHER

AND

EDWARD T. PATRICK

Of the Nevada Bar



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DIGEST OF NEVADA REPORTS

Volumes 33=42, Inclusive

ABANDONMENT

1. Acts and omissions.

1. Acts and omissions.

A company engaged in milling and reducing ores deposited tailings from ores purchased by it on its own land in a gulch, through which water at times flowed in great volume, making it necessary to dam up the tailings so that they would not be washed away. This damming process eventually forced the tailings on defendant's adjoining land. The tailings were valuable and could be re-treated profitably, and the company intended to re-treat them. In placing them on defendant's land it acted on legal advice, and there was testimony that it did not intend to abandon the tailings. Held, that the evidence warranted the conclusion that the company did not abandon the tailings so as to give defendants title thereto, since "abandonment" is the relinquishment of a right or the giving up of something to which a party is entitled, and, in determining whether one has abandoned his property or rights, the intention is the paramount object of inquiry. *Goldfield Con. v. O. S. A. Co.*, 38 Nev. 427; 150 P. 313.

See *Mines and Minerals*, 8, 23.

ABANDONMENT OF CAUSE

See *Dismissal and Nonsuit*, 1, 3.

ABANDONMENT OF WIFE

See *Extradition*, 1.

ABATEMENT

See *Mandamus*, 5; *Pleading*, 9.

ABATEMENT AND REVIVAL

V. DEATH OF PARTY AND REVIVAL OF ACTION.

1. Statutory provisions.
2. Actions on contract.

V. DEATH OF PARTY AND REVIVAL OF ACTION

1. Statutory provisions.

The legislature has the power to provide that actions for the tortious breach of contract shall survive the death of the plaintiff. *Forrester v. S. P. Co.*, 36 Nev. 248; 134 P. 753; 48 L. R. A. (N.S.) 1.

It is not the duty of the court, in construing a statute providing for the survival

of actions, though in derogation of common law, to hold that the legislature did not intend what the language of the act clearly indicates, or that cases which would not survive at common law should be excluded from the operation of the statute, where they come within the ordinary meaning of the words employed. *Id.*

2. Actions on contract.

Under Comp. Laws, 2951, providing that actions founded upon contracts may be maintained by executors and administrators in all cases where they might be maintained by the decedent in his lifetime, an action for damages caused by wrongful ejection of a passenger from a train, where the passenger had paid his fare and received a ticket, is a transitory action upon a contract which may be continued by the administratrix of the plaintiff after his death. *Forrester v. S. P. Co.*, 36 Nev. 247; 134 P. 753; 48 L. R. A. (N.S.) 1.

ABILITY TO PAY ALIMONY

See *Divorce*, 28.

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See *Criminal Law*, 51; *Dismissal and Nonsuit*, 1.

ACCEPTANCE

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See *Estoppel*, 8.

ACCEPTANCE OF PROCEEDS OF SALE

See *Estoppel*, 6.

ACCEPTANCE OF TERMS BY LETTER

See *Contracts*, 1.

ACCESSORY

See *Criminal Law*, 3, 4, 5; *Extradition*, 1.

ACCOMPLICE

See Criminal Law, 2, 15, 16, 28, 32, 42, 43, 44, 109; Habeas Corpus, 10.

ACCORD AND SATISFACTION

1. Nature and requisites.
2. Disputed or unliquidated claims.
3. Evidence.

1. Nature and requisites.

To support a plea of accord and satisfaction, it must clearly appear from the evidence that there was in fact a meeting of the minds of the parties on that point, and the proof may not depend on the construction that may be placed on a statute. *Wolf v. Humboldt County*, 36 Nev. 26; 131 P. 964; 45 L. R. A. (N.S.) 762.

2. Disputed or unliquidated claims.

A party who accepts the amount allowed on his claim against a county, disallowed in part, is not estopped from recovering the part disallowed, unless the acceptance was under circumstances disclosing a settlement or compromise of the matters in dispute. *Id.*

3. Evidence.

A party seeking to avail himself of a plea of accord and satisfaction has the burden of proving clearly a meeting of minds of parties, accompanied by a sufficient consideration. *Id.*

See Payment, 4.

ACCOUNTANTS

See Grand Jury, 7.

ACCOUNTING

See Executors and Administrators, 3, 11; Joint Adventures, 3.

ACCOUNTING BY AGENT

See Principal and Agent, 4.

ACCOUNTING OF PROFITS OF JOINT ADVENTURE

See Limitation of Actions, 2, 4.

ACCRUAL OF CAUSE OF ACTION

See Limitations of Actions, 4.

ACCUSED

See Criminal Law, 76.

ACKNOWLEDGMENT

1. Evidence—Notary's certificate.

1. Evidence—Notary's certificate.

In the absence of direct evidence on the question of mental capacity of the mortgagor owing to intoxication at the time of drawing the mortgage, the fact that the

certificate of a notary public showed that the mortgage was acknowledged before him and that he executed it is prima facie evidence of due execution. *Seeley v. Goodwin*, 39 Nev. 315; 156 P. 934.

ACQUIESCENCE

See Estoppel, 4.

ACQUIESCENCE IN SURRENDER OF PREMISES

See Landlord and Tenant, 7.

ACTION**II. NATURE AND FORM.**

1. Under code and practice acts.
2. Nature of action.
3. Single and entire cause of action.
4. Nature and grounds of action.
5. Contract and tort.
6. Parties and interests involved.

II. NATURE AND FORM**1. Under code and practice acts.**

Under the code of civil procedure, the district courts in proper cases may administer both legal and equitable relief. *Botsford v. Van Riper, et al.*, 33 Nev. 156; 110 P. 705.

Plaintiff sued defendant banking company and the firm of S. Bros., alleging that the firm had collected certain funds as plaintiff's agent and had wrongfully deposited them in the firm account in defendant bank to which the firm was indebted and that defendant bank, with knowledge of plaintiff's ownership of the money, wrongfully credited the same on the firm's debt, and refused on demand to pay the money to plaintiff, whereupon plaintiff prayed that it might be decreed to be the owner of the money, and that the bank be ordered to account therefor and pay it over. Held, that the facts alleged stated a cause of action in equity and not at law. *McStay Co. v. Stoddard*, 35 Nev. 284; 132 P. 545.

Civil practice act (Rev. Laws, 4943), section 1, providing that there shall be in the state but one form of civil action for the enforcement or protection of private rights, renders the practice act applicable to chancery proceedings, so that process may be served by publication only in such cases as is authorized by statute; the court having no jurisdiction in other cases to order such service. *State v. Wildes*, 37 Nev. 57; 139 P. 505; 142 P. 627.

2. Nature of action.

An action for damages for injuries due to the use of excessive force in ejecting a trespasser from a train is an action in tort, and not upon breach of contract. *Forrester v. S. P. Co.*, 36 Nev. 248; 134 P. 753; 48 L. R. A. (N.S.) 1.

Where the law imposes a duty arising from the relation rather than the contract, and there is a breach of duty, the aggrieved

party may sue in trespass on the case, but if there be no legal duty, except arising from the contract, there can be no election, and the party must rely upon the agreement alone, although in either case the complaint may be required to lay a previous ground by showing a contract. *Walser v. Moran*, 42 Nev. 113; 173 P. 1149; 180 P. 492.

3. Single and entire cause of action.

The formal chancery bills for accounting, discovery, and the like are no longer used, but the remedies are preserved, and, conceding a complaint to be a good specimen of a bill in equity, nevertheless, if it states but one cause of action, whatever else it may contain, the defendant cannot successfully demur on the ground of improper uniting of several causes. *Id.*

A complaint reciting one connected history of the property affected by an agreement through a series of acts on the part of defendants which contributed to and culminated in the alleged injuries to plaintiffs, showing defendants have a connected and common interest in the one subject-matter of the action, and charging the defendants with an inexcusable disregard of a duty voluntarily assumed by their contract, while showing defendants as much liable in damages for negligent breach of contract as for violation of a trust, constitutes but one cause of action. *Id.*

4. Nature and grounds of action.

Two or more causes of action cannot be united in the same complaint, unless the joinder is authorized by the practice act. *Walser v. Moran*, 42 Nev. 111; 173 P. 1149; 180 P. 492.

Practice act, sec. 97, specifying cases in which two or more causes can be joined in same complaint, is to be liberally construed, with a view to effect its object. *Id.*

A complaint stating five causes of action, the first being for breach of employment contract, the second and third being for shares of stock alleged to have been acquired by defendants in virtue of their contractual relationship with plaintiff, or for value thereof, and fifth for a discovery and accounting from defendants of all their dealings with certain property of plaintiffs intrusted to them under an executory contract, is not bad for misjoinder; all such causes of action arising out of contract and being authorized by practice act, sec. 97, subd. 1, permitting several causes of action to be united in same complaint, when arising out of contract, express or implied. *Walser v. Moran*, 42 Nev. 112; 173 P. 1149; 180 P. 492.

5. Contract and tort.

The averment of negligence in the first cause of action and fraudulent dealings in the second and subsequent causes held to amount to substantial allegations of breach of agreement, and not tort, and hence there was no misjoinder. *Walser v. Moran*, 42 Nev. 113; 173 P. 1149; 180 P. 492.

Plaintiffs are entitled to such relief as they establish upon proper proof of the alleged facts, and the prayer for judgment is not demurrable as asking relief upon both tort and contract. *Id.*

6. Parties and interests involved.

A complaint alleging a defendant acquired a part of plaintiffs' property under a contract as their attorney, and that a contract with another defendant, whereby latter was to receive a portion of plaintiffs' property, was void in its inception, because fraudulent, and praying for damages for defendants' failure to protect such property from loss, is bad, because it does not state cause of action against both defendants; the defendants being jointly liable. If at all, and the complaint showing on its face that latter defendant had no interest in property, and hence no duty of protecting it from loss. *Walser v. Moran*, 42 Nev. 112; 173 P. 1149; 180 P. 492.

See *Joint Adventures*, 3; *Pleading*, 3, 5.

ACTION AGAINST EXECUTOR AND ANOTHER

See *Judgment*, 14.

ACTION AT LAW

See *Mandamus*, 15.

ACTION ON BOND OF EXECUTOR

See *Judgment*, 14.

ACTION TO DETERMINE TAX TITLE

See *Limitation of Actions*, 7.

ACTION UPON FOREIGN DECREE

See *Judgment*, 32.

"ACTIONABLE PER SE"

See *Libel and Slander*, 1, 2.

ACTIONABLE WORDS

See *Libel and Slander*, 5.

ACTIONS

See *Divorce*, 15, 30; *Insane Persons*, 2; *Landlord and Tenant*, 9; *Limitation of Actions*, 9, 10; *Master and Servant*, 23; *Mines and Minerals*, 20; *Money Lent*, 2; *Waters and Watercourses*, 15.

ACTIONS AGAINST PARTNERS

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See *Waters and Watercourses*, 26.

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ADMISSIONS

See Evidence, 7, 9, 10; Pleading, 2, 13, 17, 23, 24.

ADOPTION

1. Inheritance by adopted children.

1. Inheritance by adopted children.

An adopted child acquires no greater right of inheritance than a natural child, and the adoption does not deprive the adoptive parent of the right to dispose of his property by will. *Forsyth v. Heward*. 41 Nev. 306; 170 P. 21.

ADOPTION OF STATUTE FROM OTHER STATE

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ADVERSE POSSESSION**I. NATURE AND REQUISITES.****(A) Acquisition of Rights by Prescription.**

1. Character and elements of adverse possession.

(B) Actual possession.

2. Acts of ownership.

3. Evidence.

(E) Duration and Continuity of Possession.

4. In general.

(F) Hostile Character of Possession.

5. In general.

I. NATURE AND REQUISITES**(A) ACQUISITION OF RIGHTS BY PRESCRIPTION****1. Character and elements of adverse possession.**

To constitute the "adverse user" which is essential to the acquisition of an estate by prescription, it is essential that the possession be by actual, open, and notorious occupation, hostile to the title of the owner of the servient estate, and that it be under an exclusive claim of right, and be continuous and uninterrupted for five years prior to the commencement of the action. *Howard v. Wright*, 38 Nev. 25; 143 P. 1184.

(B) ACTUAL POSSESSION**2. Acts of ownership.**

Proof that plaintiff had fenced and partially improved a tract of land established a sufficient possession and occupancy to support title by adverse possession under Rev. Laws, 4957, when supported by the proof of the other essentials necessary to the acquisition of such title, and entitled him to judgment quieting his title in the land against a defendant who established no title thereto. *Gander v. Simpson*, 37 Nev. 1; 137 P. 514.

Where two claimants of uninclosed and unimproved land assert title by deed but it is impossible to tell from the evidence which deed conveys the legal title, neither

can be said to have established title by adverse possession, both parties having paid taxes on the land and used the same for grazing purposes. *Id.*

3. Evidence.

Facts of case considered in reference to title by adverse possession of portion of an unpatented mining claim, majority of court deeming same insufficient. *L. V. & T. R. R. v. Summerfield*, 35 Nev. 229; 129 P. 303.

(E) DURATION AND CONTINUITY OF POSSESSION

4. In general.

Where defendants and their predecessors had continued under a deed executed in 1887 in the sole, open, and notorious possession of a strip of ground by the side of a lot the boundary of which was in dispute, an action by the holder of the record title thereto to recover its possession was barred. *Quinn v. Small*, 38 Nev. 8; 143 P. 1053.

(F) HOSTILE CHARACTER OF POSSESSION

5. In general.

The permissive use of one's premises, however long continued and whether the permission be express or implied, confers no rights of continued enjoyment. *Howard v. Wright*, 38 Nev. 25; 143 P. 1184.

See Courts, 9; Limitation of Actions, 7; Mines and Minerals, 1.

ADVERSE PROCEEDINGS

See Appeal and Error, 110; Mines and Minerals, 18.

ADVERSE RIGHT

See Easements, 1, 2.

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ALIENATION

See Homestead, 3; Husband and Wife, 4.

ALIMONY

1. Actions to annul marriage—Matters reviewable—Discretion of court.

1. Actions to annul marriage—Matters Reviewable—Discretion of court.
On certiorari to review the action of the district court in allowing alimony pendente

lite in a proceeding for the annulment of the marriage, the discretion of the district court in awarding the alimony cannot be reviewed. *Poupart v. District Court*, 34 Nev. 337; 123 P. 769.

See Divorce, 24, 25, 28, 30; Judgment, 34; Marriage, 5; Pleading, 6.

ALLEGATIONS OF COMPLAINT

See Pleading, 5.

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See Licenses, 3.

ANIMADVERSIONS ON OPPOSING COUNSEL

See Appeal and Error, 68.

ANIMALS

1. Statutory regulations.

2. Actions and other proceedings for damages.

1. Statutory regulations.

Stats. 1915, c. 135, amending act of March 17, 1911, by adding thereto section 3754, providing that it shall be unlawful for any person to have in his possession any hide from which the ears have been removed, or the brand obliterated, is an unnecessary invasion of property rights, and therefore an unreasonable exertion of the police power. *State v. Park*, 42 Nev. 386; 178 P. 389, 3 Am. Law Rep. 75.

2. Actions and other proceedings for damages.

Under allegations that defendants during month of March grazed sheep upon plaintiff's property, thereby injuring it for grazing purposes, damages may be based upon the land's value for grazing purposes during the lambing season, without such damages being specially pleaded, where the land was most useful for this purpose. *Wheeler v. O'Brien*, 40 Nev. 414; 165 P. 339.

In damage action for unlawfully grazing sheep, defendants' testimony that plaintiff's sheep also grazed upon defendants' property to their damage held not to require a finding of damage for defendants. *Id.*

In a trespass action for grazing sheep upon plaintiff's land, the damages may be calculated upon the reasonable value of pasturage, where the land was used only for such purposes. *Jensen v. Pradere*, 39 Nev. 466; 159 P. 54.

Under Rev. Laws, 2336, providing that live stock grazing on another's land, shall be liable for damages, costs, and an attorney's fee, held that a personal judgment for the attorney's fee cannot be rendered against the owner of the stock. *Id.*

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I. NATURE AND FORM OF REMEDY

1. *Origin, nature, and scope of remedies.*

An appeal is a matter purely of statutory right, and, unless authorized by statute, any attempted appeal taken from a judgment or order not appealable is void and confers no

jurisdiction on the appellate court. *Esmeralda County v. Wildes*, 36 Nev. 528; 137 P. 400, 405.

An appeal is a statutory right, and where a receiver is without right of appeal an order of the district court authorizing the receiver to prosecute an appeal is a nullity and cannot invest this court with jurisdiction. *Id.*

It is not lightly to be assumed that from failure or omission of a special act to provide for an appeal the legislature intended to deny such right to any person whose civil and legal rights are involved. *O'Donnell v. District Court*, 40 Nev. 428; 185 P. 759.

2. Statutory provisions and remedies.

Stats. 1915, c. 142, sec. 13, requiring assignments of error to be served and filed within twenty days, does not deprive an appellant of his constitutional right of appeal, since while the constitution gives the right of appeal, and the legislature, under the pretense of prescribing forms cannot deprive parties of substantial rights, the constitutional right of appeal is to be enjoyed and exercised subject to the regulations of law and practices of the court. *Coffin v. Coffin*, 40 Nev. 345; 163 P. 731.

III. DECISIONS REVIEWABLE

(A) COURTS AND OTHER TRIBUNALS SUBJECT TO REVIEW

3. Intermediate courts.

Since an order dismissing an appeal from a justice's court, whether erroneous or not, would be within the jurisdiction of the district court, it could not be reviewed by the supreme court by certiorari; being a final determination of the appeal. *Bancroft v. Pike*, 33 Nev. 53; 110 P. 1.

(B) NATURE OF SUBJECT-MATTER AND CHARACTER OF PARTIES

4. Cases in intermediate courts.

The supreme court has jurisdiction of an appeal from an order of the district court dismissing a writ of certiorari to review a judgment of a justice of the peace attacked on jurisdictional grounds, regardless of the amount in controversy. *Wong Kee v. Lillis*, 37 Nev. 5; 138 P. 900.

(D) FINALITY OF DETERMINATION

5. Nature.

Rev. Laws, 5339, providing that, upon an appeal from an order made on affidavit, a certified copy of the affidavit and counter affidavit shall be annexed to the order in place of the statement on appeal, and section 5356, providing that on appeal from an order appellant shall furnish the court with a copy of the notice of appeal, the order appealed from, and a copy of the papers used on the hearing, and a statement, if there be one, apply to appealable orders only, and do not give an appeal from orders not otherwise appealable. *Rosenthal v. Rosenthal*, 39 Nev. 74; 153 P. 91.

6. Nature and scope of decision.

An order of the trial court dismissing a

motion for a continuance is not directly appealable. *Id.*

7. Final order—Quashing service.

An order quashing personal service of summons, made on a nonresident defendant while within the state, was a final order from which an appeal would lie under civil practice act, sec. 383 (Rev. Laws, 5325). *Tiedemann v. Tiedemann*, 35 Nev. 259; 129 P. 313.

8. Orders after judgment.

Under Rev. Laws, 5329, providing that appeal may be taken from any special order made after final judgment, an order refusing to hear a motion for a new trial is appealable. *Saval v. Blume*, 41 Nev. 212; 168 P. 909.

(E) NATURE, SCOPE AND EFFECT OF DECISION

9. Injunction.

It cannot be said that section 387 of the practice act (Rev. Laws, 5329) was intended to cover the whole subject as to appeals so as to make it operate to repeal all other statutes on the subject, including section 6 of the act of 1865 (Rev. Laws, 4833); Rev. Laws, 4564, 6089, 6112 and 6133 providing for appeals from certain other orders. *State v. Ducker*, 35 Nev. 214; 127 P. 900.

Section 387 of the practice act, effective January 1, 1912 (Rev. Laws, 5329), provides that an appeal may be taken (2) from an order granting or refusing a new trial, or refusing to grant or dissolve an injunction, or refusing to appoint a receiver, or refusing to change the place of trial, and from any special order made after final judgment within sixty days after made and entered. The former practice act of 1869 (Stats. 1869, p. 248), sec. 330, provides that an appeal may be taken from an order "granting or dissolving an injunction and from an order refusing to grant or dissolve an injunction." The act approved January 26, 1865, sec. 6 (Rev. Laws, 4833), "concerning the courts of justice of this state and judicial officers," gives the supreme court jurisdiction of an appeal from an order "granting or refusing to grant an injunction or mandamus in a case provided for by law." Held, that section 387 did not impliedly repeal section 6, authorizing an appeal from an order granting an injunction, so that an appeal lies from such order. *Id.*

10. Receiver.

An order specifically allowing or rejecting all of the items of the final account of a receiver and directing a distribution of the funds is appealable. *Martin & Co. v. Kirby*, 34 Nev. 205; 117 P. 2.

An order, entered after notice and hearing on application of creditors for leave to sue a receiver of the debtor, presented after entry of order sustaining objections to the final report of the receiver and to his discharge, which allows the claims of the creditors in a specified sum, and which requires the receiver to pay the same within

a specified time, and which authorizes actions against the receiver and his surety for nonpayment within the specified time, is appealable. *Id.*

An order specifically allowing or rejecting all of the items of the final account of a receiver and directing a distribution of the funds is appealable. *Id.*

An order, entered after notice and hearing on application of creditors for leave to sue a receiver of the debtor, presented after entry of order sustaining objections to the final report of the receiver and to his discharge which allows the claims of the creditors in a specified sum, and which requires the receiver to pay the same within a specified time, and which authorizes actions against the receiver and his surety for nonpayment within the specified time, is appealable. *Id.*

IV. RIGHT OF REVIEW

(A) PERSONS ENTITLED

11. Parties or persons injured or aggrieved.

A receiver has not right of appeal from an order segregating creditors into classes with reference to the priority or preference of their claims, or directing the payment of a certain claim in preference to others, or an order adjudicating a certain claim to be preferred as against others that may be classed as general claims. *Esmeralda County v. Wildes*, 36 Nev. 526; 137 P. 400, 405.

The receiver of a state bank in course of involuntary liquidation has no right of appeal from an order decreeing a certain deposit of county funds to be a preferred claim over that of general creditors and directing its payment in full in advance of the claims of general creditors. *Id.*

A receiver may appeal from any order affecting his proper duties or personal rights, or where the estate as a whole is interested. *Id.*

A receiver, as such, has no personal interest in the segregation or distribution of the assets in his hands otherwise than for his compensation, and orders affecting only the rights of creditors, as between each other, do not affect the receiver personally, and he has no right of appeal from such orders. *Id.*

Under the provisions of Rev. Laws, 5327, which provide that "any party aggrieved may appeal," etc., the word "aggrieved" refers to a substantial grievance. The imposition of some injustice, or illegal obligation or burden, or the denial of some equitable or legal right, would constitute a grievance in the contemplation of the statute. *Id.*

(B) ESTOPPEL, WAIVER, OR AGREEMENTS AFFECTING RIGHT

12. Recognition of or acquiescence in decision.

Defendant by offering testimony, and not standing on its motion for nonsuit, waived the motion so that it cannot rely, on appeal,

on error in denying the motion. *Hochschultz v. Potosi Zinc Co.*, 33 Nev. 198; 110 P. 713.

13. Payment of or on judgment.

Plaintiff does not waive his right of appeal from that portion of a judgment denying him costs by accepting payment for the damage and interest items, and satisfying the judgment to that extent. *Glock v. Elges*, 39 Nev. 416; 159 P. 629.

V. PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW

(A) ISSUES AND QUESTIONS IN LOWER COURT

14. Necessity of presentation.

The supreme court, on appeal, will not consider questions not jurisdictional, raised for the first time on appeal. *Allen v. Ingalls*, 33 Nev. 281; 111 P. 34; 114 P. 758; 30 Ann. Cas. 755.

15. Nature and theory of cause.

Where a suit was tried by both parties on the theory that it was in equity, defendant could not object for the first time on appeal that the complaint stated a cause of action at law and that plaintiff had mistaken his remedy which was in equity instead of at law. *McStay Supply Co. v. Stoddard*, 35 Nev. 284; 132 P. 545.

16. Motions and other incidental and collateral proceedings.

On appeal from a judgment dismissing a suit for want of prosecution, the supreme court cannot consider the matter whether no motion to dismiss was made or argued in the trial court; counsel for plaintiff should have moved to vacate the order of dismissal for that reason, offered evidence in support thereof, and, if the court refused to vacate the order, the supreme court could have considered the question on appeal. *Raine v. Ennor*, 39 Nev. 365; 158 P. 133.

17. Objections to declaration, complaint, or petition.

The complaint, though praying that title be quieted against defendant, not containing the necessary allegation of a complaint to quiet title, that defendants claim an interest in the property adverse to plaintiffs, but alleging that defendants were endeavoring to cloud and cast a cloud on said property, and the evidence being such as would be offered in an action to prevent a cloud being cast on plaintiff's title, defendants were entitled to assume that the action was brought merely to prevent a cloud, as regards the contention that, because defendants did not urge in the trial court that the complaint did not state a cause of action to quiet title, they cannot do so on appeal, and that therefore the judgment should be reversed, and one quieting title in plaintiffs be ordered for want of denials in the answer. *Clay v. Scheeline B. & T. Co.*, 40 Nev. 9; 159 P. 1081.

18. Objections to plea or answer or to subsequent pleadings.

Plaintiffs, not having, until after judgment, questioned that the answer stated a defense to the matter pleaded in the complaint, cannot on appeal urge failure of defendants to demur to the complaint, as not stating a cause of action, and to deny certain of its allegations, as ground for reversing the judgment and ordering one for plaintiffs; as a demurrer to an answer which does not aid the complaint will be sustained to the defective complaint. *Id.*

19. Necessity of timely objection.

The giving of an instruction not made the ground of objection and exception when given cannot be taken advantage of on appeal as error. *Weck v. Reno Traction Co.*, 38 Nev. 286; 149 P. 65.

20. Necessity of specific objection.

Rulings upon evidence cannot be reviewed when challenged only by general objections. *Wheeler v. O'Brien*, 40 Nev. 414; 165 P. 339.

21. Scope and effect of objection.

Where an objection to evidence was sustained, not because of the form of the offer, but on the ground that the evidence was not admissible for the purpose offered, appellant cannot claim on appeal that the evidence was properly excluded because the offer was not in proper form. *Peterson v. Silver Peak*, 37 Nev. 117; 140 P. 519.

An objection to testimony as to value of land "that the witness is not qualified to show that he is entitled to give his opinion as to the market value of this ranch" was insufficient to raise on appeal the objection that he must first state the facts on which he based his opinion. *T. R. G. E. Co. v. Durham*, 38 Nev. 313; 149 P. 61.

22. Review of specific questions and particular decisions.

The dismissal of an action without affording plaintiff an opportunity to amend cannot be complained of, where there was no application for a modification of the order or for time to amend. *Keenan v. Keenan*, 40 Nev. 352; 164 P. 351.

(C) EXCEPTIONS

23. Rulings as to arguments and conduct of counsel.

Where statements made before the jury by counsel for the successful party were to some extent provoked, and no exception was taken to them, the judgment would not be reversed, though the statements were erroneous. *Knock v. T. G. R. R. Co.*, 38 Nev. 144; 145 P. 939; *L. R. A. 1915F, 3.*

24. Necessity of specific exception.

Exceptions to instructions stating that defendant desired to note a special exception to each instruction given to the jury at plaintiff's request, to each instruction given by the court of its own motion, and to each instruction requested by defendant and refused, were not sufficient under the statute to authorize a review of error in giving and

refusing the instructions. *Hochschultz v. Potosi Zinc Co.*, 33 Nev. 198; 110 P. 713.

(D) MOTIONS FOR NEW TRIAL

25. Review of decisions of intermediate courts.

On motion for an instructed verdict the testimony must be viewed in the light which is most favorable to the adverse party. *Vascacillas v. Southern Pacific Co.*, 247 Fed. 8; 159 C. C. A. 226.

26. Necessity of statement of grounds.

Rev. Laws, 5322, requiring service of memorandum of errors upon adverse party, has reference only to errors committed at the trial under section 5320, subd. 7, and not error committed in arriving at an erroneous conclusion as to the legal effect of all the evidence in the case, the making of findings, or entering of judgment. *Guisti v. Guisti*, 41 Nev. 349; 171 P. 161.

Under Rev. Laws, 5328, providing that where an appeal is based on the ground that the evidence does not justify the verdict or support findings, or upon alleged errors in ruling, motion for new trial must be made and determined before the appeal is taken, where the abstractness of an instruction was not urged as ground for new trial, the appellate court could not consider the point. *Weck v. Reno Traction Co.*, 38 Nev. 286; 149 P. 65.

An erroneous instruction not specified as error in the memorandum of exceptions cannot be considered on appeal. *Id.*

27. Sufficiency and scope of statement of grounds.

An appellant cannot obtain a review of matters not complained of in the motion for new trial. *Potosi Zinc Co. v. Mahoney*, 36 Nev. 390; 135 P. 1078.

VII. REQUISITES AND PROCEEDINGS FOR TRANSFER OF CAUSE

(A) TIME OF TAKING PROCEEDINGS.

28. Nature and operation of limitations.

An appeal from a judgment taken more than nineteen months after rendition of judgment will be dismissed, under Rev. Laws, 5329. *Nelson v. Smith*, 42 Nev. 302; 176 P. 261; 178 P. 625.

29. Effect of motion for new trial or rehearing.

An order refusing or granting a motion for a new trial is made and entered, within Rev. Laws, 5329, requiring an appeal from such order to be taken within sixty days after the order has been "made and entered in the case," at the time the order is entered in the minutes of the court, and not at the date of filing of a decision upon the merits of the motion. *Id.*

30. Effect of delay or failure to take proceedings.

An appeal not taken within one year after rendition of judgment must be dis-

missed. *Paroni v. Simonsen*, 34 Nev. 26; 115 P. 415.

The appeal from the judgment, not being taken within the six months from its rendition limited by statute, will be dismissed. *Ward v. Silver Peak*, 37 Nev. 470; 143 P. 119.

(C) PAYMENT OF FEES OR COSTS, AND BONDS OR OTHER SECURITIES

31. Sufficiency and justification.

While Comp. Laws, 3443, providing that the adverse party may except to the sufficiency of the sureties in an undertaking on appeal, does not require such party to serve notice of his exceptions upon the appellant, the appellant is entitled to such notice, in view of district court rule 10, providing that motions, except *ex parte* motions, etc., shall be noticed at least five days before the day specified for a hearing. *Konig v. N. C. O. Ry.*, 36 Nev. 181; 135 P. 141.

Comp. Laws, 3443, provides that the adverse party may except to the sufficiency of the sureties in an undertaking on appeal, and that unless they or other sureties justify before the judge or clerk the appeal shall be regarded as if no such undertaking had been given. Section 3099 provides that, where sureties are required to justify, they shall appear before the officer or person authorized to take the justification, and may be examined under oath touching their qualifications as sureties. The act of March 28, 1909, sec. 5 (Rev. Laws, 698), provides relative to the justification by a surety company that a certificate of the secretary of state, showing that such company is authorized to do business in the state, shall be prima facie evidence of all matters therein stated, that any printed copy of a circular issued by the United States treasury department, stating the amount of the capital and surplus of any such company, shall be prima facie evidence of the amount of such capital and surplus, and that, if accompanied with the certificate of the secretary of state, it shall be a complete justification for any amount not exceeding 10 per centum of the capital and surplus. Held, that an instrument excepting to the sufficiency of the surety on an undertaking on appeal, and asking that such surety appear before the judge and justify as required by section 3443, although probably sufficient where personal sureties are given, was not a sufficient exception where the undertaking was executed by a surety company; section 698 having provided an entirely different method for the justification of such companies. *Id.*

32. Form and contents of bond or undertaking.

Where judgment in justice's court went against defendant, and he brought certiorari against the justice to review the judgment in the district court which dismissed the writ, a bond on appeal to the

supreme court, bearing the title of the cause in the justice's court, gave no jurisdiction of the appeal in view of Rev. Laws, 5325, 5330, prescribing the method of appeal. *Mazade v. Justice Court*, 14 Nev. 481; 172 P. 378.

33. Approval of bond or undertaking.

A bond on appeal from order dismissing writ of certiorari to review judgment of justice's court, which was never filed in the district court as required by Rev. Laws, 5346, nor approved by the justices of the supreme court under section 5358, conferred no jurisdiction of the appeal. *Id.*

34. Delivery or filing and service of bond or undertaking.

Where it is provided by statute that an appeal is taken by the filing and service of a notice of appeal, but that an appeal shall not be effectual unless an undertaking thereon is filed within five days thereafter, the failure to file the undertaking within the time prescribed does not prevent the filing of a new notice with an undertaking thereafter, providing the time to appeal has not expired. *Douglass v. Thompson*, 35 Nev. 196; 127 P. 561; Ann. Cas. 1914C. 920.

An undertaking not filed within five days after filing of the notice of appeal, as required by Rev. Laws, 5330, 5346 (Civ. Prac. Act, secs. 388, 404), prevents a review of the case, unless such undertaking is actually approved by a majority of the justices of the supreme court before a hearing on a motion by the respondent to dismiss, under Rev. Laws, 5358 (Civ. Prac. Act, sec. 416), providing that no appeal shall be dismissed for insufficiency of the undertaking on appeal if a good and sufficient undertaking approved by a majority of the justices be filed before a hearing upon motion to dismiss the appeal. *Shute v. Big Meadow Inv. Co.*, 41 Nev. 361; 170 P. 1049.

35. Bond or undertaking on review of two or more decisions.

Where an appeal is taken both from the judgment and the order denying a motion for new trial, a single undertaking is sufficient. *Winters v. Winters*, 34 Nev. 233; 123 P. 17, 1135.

(D) WRIT OF ERROR, CITATION OR NOTICE

36. Sufficiency.

The indorsements and the file marks on the original notice of appeal filed with the clerk of the court were no part of the notice, and a failure to include them in the copy served on the adverse party did not affect its validity. *Konig v. N. C. O. Ry.*, 36 Nev. 181; 135 P. 141.

37. Persons to be served.

While it is better practice to direct notice of appeal to all of the parties who, under any circumstances, might have adverse interests on the appeal, under the statute, if notice be served upon the adverse parties, it is sufficient. *Douglass v. Thompson*, 35 Nev. 196; 127 P. 561; Ann. Cas. 1914C. 920.

IX. SUPERSEDEAS OR STAY OF PROCEEDINGS

38. Right to supersedeas or stay.

On appeal from a mandatory injunction requiring defendant to release water from its reservoir and permit it to flow down the stream so that plaintiff could use it, defendant was entitled as a matter of right, to a stay of proceedings upon the injunction upon the filing of a proper stay bond. *State v. Ducker*, 35 Nev. 214; 127 P. 990.

39. Use of appeal or cost bond as supersedeas bond.

Where an action was instituted to recover possession of certain mines under a contract giving plaintiffs the right to take possession of and work the mines, defendants, to stay execution pending appeal from a judgment for plaintiffs, were bound to give an undertaking, the amount of which should be fixed by the judge under Comp. Laws, 3440, providing that, if a judgment appealed from directs the delivery of possession of real property, execution shall not be stayed unless a written undertaking be executed by appellant to the effect that during the possession of the property by appellant he will not commit or suffer any waste thereon, and that, if the judgment be affirmed, he will pay the value of the use and occupation from the time of appeal until delivery of possession pursuant to the judgment or order, not exceeding the sum fixed by the judge, a \$300 cost bond being insufficient for such stay. *Silver Peak v. District Court*, 33 Nev. 97; 110 P. 503; 29 Ann. Cas. 587.

Where, after judgment in favor of plaintiffs, the parties stipulated that the operation of a writ of assistance would be stayed to such a time as the court might set for the hearing of testimony to determine the amount of a stay bond, and that the bond, as to its form and sufficiency, should be approved by the court or a judge thereof, and should be to the end and substantially in the form as though on an appeal and given under Comp. Laws, 3440, defendants were thereafter estopped to contend that such section did not cover the bond to be given, and that the giving of a \$300 cost bond was sufficient to stay the execution of the writ pending appeal. *Id.*

40. Amount or penalty of bond or undertaking.

When application was first made to the court to fix a stay bond pending appeal in an action to recover certain mines, the court was unable to give the matter due consideration, and authorized a temporary stay on the giving of an appeal bond for \$300, reserving the right thereafter to establish the amount of a permanent bond to stay execution, pending appeal, and fixed a date for the hearing of proofs on that subject. The court thereafter fixed \$150,000 as the amount of an undertaking to stay execution pending a motion for a new trial, and until fifteen days thereafter. Defendants failed to introduce any proof regard-

ing the value of the ore they were removing from the property, and as to the plaintiff's damage from waste by their continued possession. Held, that the court had jurisdiction to fix the amount of such stay bond. *Id.*

41. Time of giving bond.

A bond to stay execution pending appeal may be given any time before the execution has been executed. *Id.*

42. Attachment and garnishment.

Where the court dissolved an attachment of personal property and the attaching officer immediately delivered it over to the debtor and took his receipt therefor, the court's order was executed, and the subsequent appeal and bond staying the execution of the order were ineffective, and the debtor might thereafter dispose of the property as he saw fit. *Green v. Hooper*, 41 Nev. 13; 167 P. 23.

X. RECORD AND PROCEEDINGS NOT IN RECORD

(B) SCOPE AND CONTENTS OF RECORD

43. Pleadings and proceedings relating thereto.

Upon appeal from an order denying costs, the pleadings cannot be considered unless embodied in a statement attached to the order. *Glock v. Elges*, 39 Nev. 415; 159 P. 629.

44. Proceedings on reference.

The findings of fact and conclusions of law of a referee cannot be considered on appeal when they are not included in any statement of appeal or motion for new trial or proper bill of exceptions, because they are not a part of the judgment roll. *Western E. Co. v. Nevada A. Co.*, 33 Nev. 203; 110 P. 1129.

45. Verdict, findings or decision.

As an appeal, in the absence of statement or bill of exceptions, carries up the judgment roll alone, findings made by the trial court cannot be considered, in the absence of a statement or bill of exceptions. *Werner v. Babcock*, 34 Nev. 42; 116 P. 357.

46. Opinion of lower court.

Though section 340 of the civil practice act (Comp. Laws, 3445) provides, among other things, that if any written opinion be placed on file, in entering judgment or making an order below, a copy shall be furnished, certified in like manner, etc., a written opinion and findings of the lower court do not constitute any part of the "judgment roll," but are only intended to aid the appellate court in the determination of an appeal. *Id.*

(C) NECESSITY OF BILL OF EXCEPTIONS, CASE, OR STATEMENT OF FACTS

47. Decisions not otherwise reviewable.

On appeal from the judgment roll alone, where the judgment roll shows that a demurrer to the complaint was presented

to the court, and discloses a ruling thereon, an order sustaining a demurrer is deemed to have been excepted to, under Stats. 1915, c. 208, and alleged error in so ruling is not required to be presented by bill of exceptions. *Walser v. Moran* 42 Nev. 497; 181 P. 437.

48. Scope and sufficiency of case, statement, or certificate of evidence.

A statement on appeal is presumed to contain all the evidence and need not contain certificate to that effect. *Gamble v. Silver Peak*, 34 Nev. 351; 126 P. 111.

Under Comp Laws, 3864, which provides that a statement on appeal is presumed to contain all the evidence, a statement need not contain a certificate that it contains all the material evidence in the case. *Gamble v. Silver Peak*, 34 Nev. 352; 126 P. 111.

49. Substitutes.

Rev. Laws, 5320, specifies the causes for which new trials may be granted. Sections 5321, 5322, provide that a motion for error in law occurring at the trial and excepted to by the party making application must be made upon the minutes of the court without statement or bill of exceptions, and that the moving party shall, within ten days after the service of motion for new trial, serve upon the adverse party a memorandum of such errors as he intends to rely on upon the motion, verified by his attorney. Section 5325 provides that a judgment or order in a civil case may be reviewed as prescribed by the title. Section 5328 provides that when the appeal is based on the ground of errors in rulings on the evidence or upon the giving of erroneous instructions, appellant must present his motion for a new trial to the trial court and have it determined before the appeal can be taken. Section 5331 defines a statement on appeal and presents the method of serving, filing, settling, and amending the same. Section 5335 provides that the omission to make a statement within the time limited shall be deemed a waiver of the right thereto, and the omission of proposed amendments an implied agreement to the statement, and section 5343 provides that a bill of exceptions may be taken to the order or ruling of the court, which shall be signed by the presiding judge and become a part of the record, and that any party aggrieved may appeal from the judgment or any appealable order without further statement or motion. Defendant filed a "Memorandum of Exceptions," submitted and relied upon in support of its motion for a new trial, which was verified by its attorney, but not settled by the court. Held, that the memorandum could not be considered as filling the office of bills of exceptions or a statement on appeal. *Ward v. Pittsburg Silver Peak*, 39 Nev. 80; 148 P. 345; 153 P. 434.

Absence of statement on appeal is unobjectionable where counsel have stipulated that the statement on motion for a new trial shall be considered as a statement on

appeal. *Gamble v. Silver Peak*, 34 Nev. 351; 126 P. 111.

50. Effect of failure to make bill, case, or statement.

By direct provision of Rev. Laws, 5338, a party may appeal on the judgment roll alone. *Daly v. Lahontan Mines Co.*, 39 Nev. 14; 151 P. 514; 158 P. 285.

Within Rev. Laws, 5358, providing that an appeal shall not be dismissed for any irregularity not affecting the jurisdiction of the court to hear and determine the appeal, or affecting the substantial rights of the parties, where there was no bill of exceptions or statement on appeal, but only a memorandum of exceptions for use on a motion for a new trial, the matter was one of jurisdiction. *Ward v. Pittsburg Silver Peak*, 39 Nev. 80; 148 P. 345; 153 P. 434.

(D) CONTENTS, MAKING, AND SETTLEMENT OF CASE OR STATEMENT OF FACTS

51. Matters included.

The order denying the motion for a new trial, or the minute entry thereof, must be contained in the statement on appeal to give the supreme court jurisdiction. In *Re Cook's Estate*, 34 Nev. 217; 117 P. 27.

52. Time for making and filing or service.

Where plaintiff made a late filing below of its statement on appeal, its complaint and the reply, denying the affirmative matter in the answer, having been verified, its application for relief from the default should not have been denied merely for failure to file an affidavit of merits, since the trial court, to which the application was made, had the pleadings before it and had heard the evidence, and so could consider them in determining the question of the merits of the appeal. *Bank of Italy v. Burns*, 38 Nev. 398; 150 P. 249.

In considering an application for relief from the entry of a default for late filing below of a statement on appeal, the trial court should grant the relief sought in a case of doubt. *Id.*

Under Rev. Laws, 5331, requiring a proposed statement to be served and filed within thirty days after written notice of the judgment or order appealed from, any defect in such notice is waived by serving and filing a notice of appeal. *Glock v. Elges*, 39 Nev. 415; 159 P. 629.

A statement, not served and filed within the time prescribed by Rev. Laws, 5331, cannot be considered on appeal. *Id.*

A failure to serve and file a statement within the time prescribed by Rev. Laws, 5331, does not defeat the appeal, where it was duly perfected under section 5330, by filing a notice of appeal and undertaking or waiver thereof. *Id.*

(F) MAKING, FORM, AND REQUISITES OF TRANSCRIPT OR RETURN

53. Duty to make.

Counsel should personally supervise the making up of the record on appeal and not

rely upon the clerks of court, and should examine the transcripts before they are sent up, if possible, so as to make timely correction of any defects therein. In *Re Cook's Estate*, 34 Nev. 217; 117 P. 27.

(H) TRANSMISSION, FILING, PRINTING, AND SERVICE OF COPIES

54. *Excuses for delay.*

An objection that transcript of record was not filed within thirty days after the appeal had been perfected, in compliance with supreme court rule 2, was waived, where, after the transcript was filed, counsel for the parties entered into stipulations in which additional time to serve and file points and authorities was given to counsel for respondent, especially where the respondent failed to timely move for dismissal. *Walser v. Moran*, 42 Nev. 497; 181 P. 437.

55. *Service of copies.*

Where transcript was served in part before docketing of cause in the supreme court and the remainder within a reasonable time thereafter, the appeal will not be dismissed under court rule 13 relating to the curing of technical objections, the policy of the court being to give the appellant every reasonable opportunity to be heard. *Gulstl v. Gulstl*, 41 Nev. 349; 171 P. 161.

56. *Effect of failure to print or serve copies.*

Motion to strike assignment of errors, not filed in the time prescribed by Stats. 1915, c. 142, sec. 13, and no memorandum of errors being served on respondent pursuant to Rev. Laws, 5322, is well taken. *Gardner v. Pacific Power Co.*, 40 Nev. 343; 163 P. 731.

(I) DEFECTS, OBJECTIONS, AMENDMENT AND CORRECTION

57. *Authority.*

This court cannot require the trial court to add or take from the statement or bill of exceptions as settled by the trial judge. Upon a proper showing that an exception was insisted upon before the trial court and refused, the supreme court, if the exception is clearly proven, will determine the exception and ruling and the facts applicable thereto to be a part of the record on appeal, not in the nature of an amendment to the bill or statement as settled by the trial judge, but with the same force and effect. *Miller v. Miller*, 36 Nev. 115; 134 P. 100; 136 P. 978.

The supreme court has no power to make a new statement on appeal, which must be settled in the lower court, or to direct that court to make one, the statement having been settled as prescribed by statute; but any relief under the practice act, sec. 142 (Rev. Laws, 5084), by reason of mistake, inadvertence, surprise, or excusable neglect of appellant, must be had in the lower court; a motion for a new trial there made having never been determined. *Skaggs v. Bridgman*, 39 Nev. 310; 154 P. 77; 159 P. 521.

58. *Supplying omissions.*

Where the clerk's certificate referred to

an "appeal from the order denying a new trial herein," the supreme court may, on appellant's application, permit him to supply the order by filing a minute entry thereof, so as to enable the supreme court to consider the appeal, though the statement on appeal originally did not contain the motion for a new trial, or a minute entry thereof. In *Re Cook's Estate*, 34 Nev. 217; 117 P. 27.

59. *Striking out.*

Whether there shall be stricken from the files on appeal from an order refusing a new trial, a transcript of the testimony and proceedings certified by the reporter, but with nothing to indicate that it had been agreed on by counsel or settled and allowed by the court as a statement on appeal, or that it was used at the hearing on the motion for the new trial, depends on whether or not the minutes of the court offered by appellant under the rule as to diminution of the record, when admitted, show it is in some way properly connected with the appeal. *Ward v. Silver Peak*, 37 Nev. 470; 143 P. 119.

(K) QUESTIONS PRESENTED FOR REVIEW

60. *Limitation by scope of record.*

Where a judgment is supported by the pleadings and nothing save the record proper is before the appellate court, it must be affirmed. *Werner v. Babcock*, 34 Nev. 42; 116 P. 357.

61. *Errors on face of record.*

Where a receiver's accounts are not made part of the record on appeal from an order refusing to set aside an order fixing his compensation, it is not shown on such appeal that the petition for compensation misled the court by misstating his accounts, so that a mistake in its action appeared as a matter of record below. *State v. Wildes*, 37 Nev. 56; 139 P. 505; 142 P. 627.

62. *Question on interlocutory proceedings.*

In the absence of a statement on appeal or bill of exceptions, the appellate court is confined to examination of the judgment roll alone, and cannot review the denial of a continuance to take depositions. *Rosenthal v. Rosenthal*, 39 Nev. 74; 153 P. 91.

XI. ASSIGNMENT OF ERRORS

63. *Purpose and functions.*

An assignment of errors is founded upon the bill of exceptions. *Coffin v. Coffin*, 40 Nev. 345; 163 P. 731.

64. *Necessity.*

In the absence of an assignment of error to the sustaining of a demurrer to the cause of action, the ruling will not be reviewed. *Lamb v. Lucky Boy M. Co.*, 37 Nev. 9; 138 P. 902.

Where the appeal is upon the judgment roll alone, no assignment of errors is necessary. *Miller v. Walser*, 42 Nev. 497; 181 P. 437.

Where demurrer to complaint for libel

was sustained, all the matters pertaining to the proceedings in the trial court so far as affecting the plaintiff's rights are embraced in the "judgment roll" within Rev. Laws, 5273, subd. 2, stating what constitutes the judgment roll, so that under Stats. 1915, c. 142, sec. 11, permitting an appeal on the judgment roll alone, it was unnecessary, to file assignments of error as required by section 13 of such act. *Talbot v. Mack*, 41 Nev. 245; 169 P. 25.

A point not presented by an assignment of error cannot be considered on appeal. *Wright v. Washoe County Bank*, 251 F. 819, 163 C. C. A. 653.

65. Time for filing.

Stats. 1915, c. 142, sec. 13, providing that assignments of error shall be served on the adverse parties and filed with the clerk of the supreme court within twenty days after an appeal has been taken, and that if not so filed no error shall be considered, is peremptory and leaves no room for construction, so that, if the assignment be not filed within the time limited, the omission may not be cured by a subsequent filing, in the absence of fraud, bad faith, or deception on the part of respondent. *Coffin v. Coffin*, 40 Nev. 345; 163 P. 731.

Motion to affirm, copy of transcript of record not being served on respondent, as required by supreme court rule 25, par. 3, and appellant's points and authorities or brief not being filed and served in the time provided by rule 11, is well taken. *Gardner v. Pacific Power Co.*, 40 Nev. 343; 163 P. 731.

66. Scope and effect of assignment.

A memorandum of errors filed and served in support of a motion for a new trial may be considered on appeal without further assignment of errors. *Torp v. Clemons*, 37 Nev. 474; 142 P. 1115.

XII. BRIEFS

67. Specification of errors.

The supreme court may consider and determine the merits of an appeal or proceeding upon questions other than those considered by counsel. But, where such questions suggest themselves to the court, the better practice would be to request counsel to consider the same and afford them opportunity to be heard thereon. *Radovich v. W. U. Tel. Co.*, 36 Nev. 341; 135 P. 920; 136 P. 704.

68. Striking out.

Where statements in the reply brief of counsel for appellant reflecting upon the professional conduct of counsel for respondent are not warranted by anything appearing in the record, they are improper and will be directed to be expunged. *Raine v. Ennor*, 39 Nev. 365; 158 P. 133.

69. Failure to set out points and arguments.

Assignments of error not referred to in the briefs or oral argument do not require consideration. *State v. King*, 35 Nev. 153; 126 P. 880.

XIII. DISMISSAL, WITHDRAWAL OR ABANDONMENT

70. Want of actual controversy.

An appeal will be dismissed upon proof by affidavit that there is no longer a controversy for determination. *Foster v. Jones*, 35 Nev. 248; 128 P. 986.

Where, pending appeal from judgment sustaining demurrer to the complaint in an action to enjoin a nuisance, defendant built its plant and operated it for three years, without any perceptible harm to plaintiff's lands, the appeal would be dismissed as embodying a "moot case," one seeking to determine an abstract question which does not rest upon existing facts or rights, since the cause of action of plaintiff's complaint, if any was alleged, was based upon a threatened injury to its lands from proposed action which did not in fact follow such action. *Pac. L. Co. v. Mason Val. M. Co.*, 39 Nev. 105; 153 P. 431.

71. Defects in proceedings for review.

Notwithstanding Rev. Laws, 5358, where appellant fails to comply, at least substantially, with the provisions of the statute, the court can do nothing but dismiss the appeal, as the right of appeal is regulated by statute. *Ward v. Pittsburg Silver Peak*, 39 Nev. 80; 184 P. 345; 153 P. 434.

72. Proceedings frivolous or for delay.

Where appellant filed an affidavit that he had been taken seriously ill about the time the appeal was taken, and was confined to a hospital for about two months thereafter, and was not aware for about a year and a half that his appeal had not been duly prosecuted, and that he did not know, prior to that time, that he was without attorney in the supreme court, the court will not dismiss the appeal on the ground that it was taken for delay merely. *Golden v. McKim*, 37 Nev. 205; 141 P. 676.

73. Time for making.

That a motion to dismiss an appeal for noncompliance with supreme court rules 2 and 3, providing that the transcript of the record must be filed within thirty days after the appeal has been perfected and the statement settled, otherwise the appeal will be dismissed on motion without notice, was not filed until more than three terms had elapsed after the appeal was taken and the record filed in the supreme court, did not amount to a waiver of the right to make a motion; supreme court rule 8, providing that objections to the record affecting any right "which might be cured on suggestion of diminution of the record," not applying. *Skages v. Bridgman*, 39 Nev. 310; 154 P. 77; 159 P. 521.

74. Hearing and determination.

An appeal regularly taken will not be dismissed unless it clearly appears the appeal was taken for delay, or apparent want of prosecution is not accounted for. *Boyce v. Third Chance M. Co.*, 36 Nev. 33; 123 P. 397.

It is the practice of the supreme court to

hear motions to dismiss and other preliminary motions together with the merits unless special reasons for the contrary exist. *Id.*

75. Abandonment.

That appellant having failed for more than six months to file briefs, or to appear and argue the case on a motion to dismiss or on the merits after notice of the hearing, and having made no request to submit the cause without argument or brief, warrants an inference of abandonment of the appeal, which was from the judgment roll alone, so that the judgment is properly affirmed; no glaring defects appearing on the face of the judgment roll. *Potosi Zinc Co. v. Mahoney*, 34 Nev. 295; 119 P. 775.

76. Vacating order and reinstatement.

An appeal dismissed for noncompliance with supreme court rules 2 and 3 will not be restored, where no purpose would be served, the record presenting for consideration only the judgment roll showing no error. *Skaggs v. Bridgman*, 39 Nev. 310; 154 P. 77; 159 P. 521.

XV. HEARING AND REHEARING

77. Grounds—Petition for rehearing.

The questions raised for the first time on a petition for a rehearing will not be considered. *Gamble v. Silver Peak*, 35 Nev. 319; 133 P. 936.

An appellant who has prevailed on appeal and obtained a reversal of the judgment and order appealed from, as prayed for, will not be heard for the first time on reply to a petition for a rehearing, to suggest that a further order be made directing the lower court to dismiss the action. *Id.*

78. Scope and conduct.

A point not urged in supreme court upon original hearing cannot be considered on petition for rehearing. *Nelson v. Smith*, 42 Nev. 303; 176 P. 261; 178 P. 625.

XVI. REVIEW

(A) SCOPE AND EXTENT

79. Matters not necessary to decision on review.

The supreme court will not determine constitutional questions which are not essential to a decision of the case. *U. S. F. & G. Co. v. Marks*, 37 Nev. 306; 142 P. 524.

80. Trial in equitable actions.

In equity case, verdict of jury is merely advisory, and in such cases supreme court will not review errors assigned to instructions given to jury. *Nelson v. Smith*, 42 Nev. 303; 176 P. 261; 178 P. 625.

81. Rulings as law of case.

The court on appeal will assume a ruling of the trial court not questioned by counsel for the adverse party to have been correct. *Seeley v. Goodwin*, 39 Nev. 315; 156 P. 934.

82. Reasons for decision.

The rule of law that a judgment which is right will not be reversed merely because

a wrong reason is given may not be applied to uphold a judgment not sustained by sufficient evidence. *Richards v. Vermilyea*, 42 Nev. 294; 175 P. 188; 180 P. 121.

83. On appeal from decision on motion for new trial or after grant of new trial.

An exception, properly before and considered by the court in denying a motion for new trial, may be considered on appeal from the order denying the motion, though it might have been made the basis of a direct appeal from the judgment. *Ward v. Silver Peak*, 37 Nev. 470; 143 P. 119.

(B) INTERLOCUTORY, COLLATERAL AND SUPPLEMENTARY PROCEEDINGS AND QUESTIONS

84. Interlocutory proceedings brought up.

An order denying a motion for a continuance can only be reviewed by appeal from a judgment or order refusing a new trial, or by bill of exceptions properly allowed by the trial court. *Rosenthal v. Rosenthal*, 39 Nev. 74; 153 P. 91.

Under Rev. Laws, 5340, the court on appeal from judgment will review court's ruling on motion to strike certain affirmative matter pleaded in answer. *Potter v. L. A. & S. L. R. R.*, 42 Nev. 370; 177 P. 933.

85. On separate appeal from interlocutory judgment or order.

Where the case is before the supreme court on appeal from an order sustaining demurrer to the complaint, the court cannot look back of the complaint to ascertain the facts. *Daly v. Lahontan Mines Co.*, 39 Nev. 15; 151 P. 514; 158 P. 285.

(C) PARTIES ENTITLED TO ALLEGE ERROR

86. Error committed or invited by party complaining.

Both appeals being from the judgment as "entered," appellant is in no position to urge that the time within which an appeal may be taken, under Rev. Laws, 5329, begins to run from the date of the rendition of judgment, and his motion to dismiss cross-appeal, taken within six months after entry of judgment, will not be considered. *Dixon v. Pruett*, 42 Nev. 345; 177 P. 11.

(D) AMENDMENTS, ADDITIONAL PROOFS AND TRIAL OF CAUSE ANEW

87. Additional proofs.

The court on appeal from a judgment based on findings that land is mineral may consider a patent since issued conclusive that the land is not mineral. *Earl v. Morrison*, 39 Nev. 120; 154 P. 75.

(E) PRESUMPTIONS

88. Burden of showing error.

The parties claiming error on appeal must clearly establish it. *Peterson v. Silver Peak*, 37 Nev. 117; 140 P. 519.

89. In general.

The court on appeal from a judgment only, will presume that the evidence is

sufficient to support the findings of the trial court. *Wolf v. Humboldt County*, 36 Nev. 26; 131 P. 964; 45 L. R. A. (N.S.) 762.

Where the executors of an estate had made two reports before their final report, each of which was proved and settled by the court, and there was no evidence in the record that the estate could have been settled sooner with advantage, the court would not presume such to have been the fact. *In Re Hartung's Estate*, 39 Nev. 200; 155 P. 353.

Where the evidence is not included in the transcript, the supreme court is bound to assume that it supports the findings. *Phillips v. Snowden Placer Co.*, 40 Nev. 67; 160 P. 786.

90. Pleading.

The presumption, if any, as to time of filing the petition in bankruptcy, is that it was filed on the day of the adjudication of bankruptcy; the act of July 1, 1898, c. 541, 30 Stats. 551 (U. S. Comp. St. 1901, p. 3429), requiring no notice of the hearing, but contemplating a hearing forthwith and an adjudication or a dismissal of the petition. *Allen v. Ingalls*, 33 Nev. 281; 111 P. 34; 114 P. 758; 30 Ann. Cas. 755.

91. Dismissal, nonsuit, demurrer to evidence, or direction of verdict.

In view of Rev. Laws, 4922, 5356, a judgment of dismissal is sufficient without a recital in the record that a motion to dismiss had been made; the presumption being that everything was done to lay the foundation for a valid judgment of dismissal, whether the making of a motion to dismiss, or something more. *Raine v. Ennor*, 39 Nev. 365; 158 P. 133.

92. Findings of court or referee.

Findings necessary to support the judgment are presumed where findings are not made or requested. *Murray v. Osborne*, 33 Nev. 267; 111 P. 31.

Where the record showed that, on a motion to open a default on the ground of excusable neglect, the court admitted an English statute offered in evidence by plaintiff to support her contention that defendants could not be heard on their motion, but failed to show that the court acted in any way on such statute, it would not be assumed that he gave such contention serious consideration. *Esden v. May*, 36 Nev. 612; 135 P. 1185.

Fact that trial court refused to find as requested, not showing court did not find at all, and record not affirmatively showing court either failed or refused to follow practice act, supreme court will not presume against regularity of proceedings of trial court as to findings. *Moore v. Rochester W. M. Co.*, 42 Nev. 165; 174 P. 1017.

93. Taking and perfecting appeal or other proceeding for review.

Where, on a motion to dismiss an appeal on the ground that the copy of the notice of appeal was served on the respondent

before the filing of the original, it appeared that the filing and service were on the same day, and the affidavit of respondent's counsel that the original was filed after the service of the copy was apparently based upon the assumption that the copy should have included a copy of the indorsements on the original, contained no facts showing any particular knowledge of the order of filing and service, other than that gained from the documents, and was contradicted by the affidavit of the appellant's attorney that the filing preceded the service, the presumption that they were filed in regular order was not overcome. *Konig v. N. C. O. Ry.*, 36 Nev. 181; 135 P. 141.

Where it appeared that a copy of notice of appeal was served on the attorneys for the respondent on the same day that the original notice was filed with clerk, it would be presumed, in the absence of proof to the contrary, that the filing preceded the service. *Id.*

94. Making and contents of transcript or abstract of record.

Where a judgment roll contains a demurrer to the complaint, and an amended complaint is in the record, it will be inferred that the demurrer was sustained, and that the original complaint was superseded by the amended complaint, and the absence of the original complaint from the transcript is a mere technical omission, which could have been cured on suggestion of diminution of the record under supreme court rule 8, and could not have prejudiced the rights of respondent. *Walser v. Moran*, 42 Nev. 497; 181 P. 437.

(F) DISCRETION OF LOWER COURT

95. Power to review.

If the trial court passes on a motion to vacate an alleged fraudulent award of arbitrators, the court of review will rarely disturb such a discretionary order. *Nelson v. Reinhart*, 41 Nev. 69; 167 P. 690.

96. Opening default.

Ordinarily an appellate court will not disturb an order setting aside a default where the application is made on the ground of inadvertence or excusable neglect and supported by an affidavit or showing of merits. *Esden v. May*, 36 Nev. 612; 135 P. 1185.

97. Amended and supplemental pleadings.

The allowance or refusal of leave to amend pleadings in actions at law is discretionary with the trial court, the exercise of which is not reviewable except in case of gross abuse of discretion. *T. R. G. E. Co. v. Benner*, 211 F. 79; 127 C. C. A. 503.

98. Proceedings preliminary to trial—Continuance.

A motion for a continuance is addressed to the discretion of the court, and its ruling will not be reversed, except for most potent reasons. *Neven v. Neven*, 38 Nev. 541; 148 P. 354; 154 P. 78; Ann. Cas. 1918B, 1083.

99. Examination of witnesses.

While ordinarily the allowance of leading questions is no ground for reversal, even if the trial court abuses its discretion, the abuse may be so flagrant as to require a reversal. *Anderson v. Berrum*, 36 Nev. 465; 136 P. 973.

100. New trial or rehearing—For insufficiency of evidence.

Orders of the trial court granting new trial for insufficiency of conflicting evidence will not be disturbed, in the absence of a clear abuse of discretion. *Goldfield Mohawk Co. v. Frances-Mohawk Co.*, 35 Nev. 424; 129 P. 315.

(G) QUESTIONS OF FACT, VERDICTS AND FINDINGS

101. Power and duty to review.

The parties to an action tried without a jury cannot by consent or stipulation authorize the Circuit Court of Appeals to review the sufficiency of the evidence to support a general finding, as the authority of that court is regulated by statute, and its jurisdiction cannot be enlarged or extended by consent or stipulation of the parties. *Sierra Land and Livestock Co. v. Desert Power and Mill Co.*, 229 F. 982; 144 C. C. A. 264.

102. Questions involving issues of fact.

Court's refusal to bar an attorney from appearing for plaintiffs on ground that he had been previously hired by defendants, where based upon conflicting testimony on question of fact as to whether he was so employed, will not be disturbed by the supreme court. *Nelson v. Smith*, 42 Nev. 302; 176 P. 261; 178 P. 625.

103. Verdicts—Sufficiency of evidence in support.

The jury's finding as to the cause of injuries to an employee in a mine, thrown from the bucket in which he was riding, when supported by substantial evidence, will not be disturbed. *Ryan v. Manhattan M. Co.*, 38 Nev. 92; 145 P. 907.

A judgment will not be reversed where there is substantial evidence to support it. *Jensen v. Pradere*, 39 Nev. 446; 159 P. 54.

On a writ of error to review a judgment entered on the verdict of a jury, if there is any substantial evidence to support the verdict, it is sufficient, the determination of the weight to which it is entitled not being within the province of the appellate court, which is confined to a consideration of exceptions, to the admission or rejection of evidence, and to the charge of the court and its refusal to charge. *Montana Tonopah M. Co. v. Dunlap*, 196 F. 612; 116 C. C. A. 286.

104. Verdicts—On conflicting evidence.

On appeal from a verdict for the plaintiff, in an action where the testimony was conflicting, facts may be regarded as shown by the evidence for the plaintiff. *Forrester v. S. P. Co.*, 36 Nev. 247; 134 P. 753; 48 L. R. A. (N.S.) 1.

In a suit to establish and enforce a trust a finding of the existence of the trust, based on substantially conflicting evidence, will not be reversed on appeal. *Torp v. Clemons*, 37 Nev. 474; 142 P. 1115.

The finding of the jury on controverted issues of fact, if supported by substantial evidence, cannot be disturbed on appeal. *H. H. M. Safe Co. v. Baillet*, 38 Nev. 164; 145 P. 941.

Where the evidence is conflicting, the verdict will not be disturbed on appeal. *Knock v. T. & G. R. R. Co.*, 38 Nev. 143; 145 P. 939; L. R. A. 1915F, 3.

A verdict based upon conflicting evidence will not be disturbed by the supreme court. *Nelson v. Smith*, 42 Nev. 303; 176 P. 261; 178 P. 625.

105. Verdicts—Against weight of evidence.

Where testimony as to matters essential to a recovery is contradicted by physical facts, a verdict contrary to the physical facts must be set aside, but testimony contrary to a physical fact as to a matter not controlling affects only the credibility of the witnesses. *Knock v. T. & G. R. R. Co.*, 38 Nev. 143; 145 P. 939; L. R. A. 1915F, 3.

106. Verdicts—Amount of recovery.

In actions in which there is no legal rule for the measure of damages, the allowance by the jury will not be disturbed as excessive unless it is so flagrantly improper as to indicate prejudice or corruption in the jury, especially where the trial court has approved the award by denying a new trial. *Forrester v. S. P. Co.*, 36 Nev. 248; 134 P. 753; 48 L. R. A. (N.S.) 1.

Where there was a substantial conflict as to the nature and the duration of the injuries sued for, and the amount of the verdict was reasonably supported by the evidence, the injured person testified as a witness, the jury had ample opportunity to observe his manner, conduct, and condition, and he was subjected to a long and careful cross-examination, the verdict will not be disturbed as excessive. *Ryan v. Manhattan M. Co.*, 38 Nev. 93; 145 P. 907.

An objection that the damages allowed were excessive is not reviewable by the circuit court of appeals. *Truckee R. G. E. Co. v. Benner*, 211 F. 79; 127 C. C. A. 503.

107. Verdicts—Approval of trial court.

This court will not disturb a verdict if there is any substantial evidence to support it, especially where a motion for nonsuit has been overruled and a motion for a new trial has been denied. *Leete v. S. P. Co.*, 37 Nev. 49; 139 P. 29.

108. Findings of court—Conclusiveness.

Where, in action for attorney's services, the court found that plaintiffs were entitled to recover fees on the basis of a schedule claimed to have been submitted by them to defendant before the services were rendered, and that the schedule rates were the reasonable value of the services, the case

would be so considered on appeal, and the opinions of experts, placing a different value on the services rendered, would not be regarded as controlling. *Thompson v. Tonopah L. Co.*, 37 Nev. 183; 141 P. 69.

In cases tried by the court without a jury, the same consideration is given to the court's findings as to a verdict, and the same rules apply as to reversing them on appeal, on the ground that they are contrary to the evidence, as apply to a verdict. *Id.*

Under Rev. St. sec. 700 (Comp. St. 1913, sec. 1668), providing that, when an issue of fact in any civil case is tried and determined by the court without a jury, the rulings of the court in progress of the trial, if excepted to at the time and duly presented by a bill of exceptions, may be reviewed upon writ of error or appeal, and that when the finding is special the review may extend to a determination of the sufficiency of the facts found to support the judgment, an appellate court cannot, on writ of error, inquire into the sufficiency of the testimony to support a general finding, where at the close of the testimony there was no application for a declaration of law that upon the whole case the finding should be for plaintiff or for defendant. *Sierra Land and Livestock Co. v. Desert Power and Mill Co.*, 229 F. 982; 144 C. C. A. 264.

109. Findings of court—Sufficiency of evidence in support.

The weight of the evidence and the credibility of witnesses is within the exclusive province of the trial court, and this court will not disturb a judgment unless it can be said, as a matter of law, that there is no substantial evidence in support of it. *Jones v. West End Con. M. Co.*, 36 Nev. 149; 134 P. 104.

An appellate court is reluctant to disturb the trial court's judgment on the ground that the evidence does not justify it, and will not do so except where there is no substantial evidence to support it. *Gault v. Grose*, 39 Nev. 274; 155 P. 1098.

A finding supported by substantial evidence will not be disturbed, where no passion or prejudice on the trial court's part is indicated. *De Remer v. Anderson*, 41 Nev. 288; 169 P. 737.

Findings of the trial court are reluctantly disturbed, and will not be interfered with where there is substantial evidence to sustain them. *McCone v. Eccles*, 42 Nev. 451; 181 P. 134.

110. Findings of court—On conflicting evidence.

It is the exclusive province of the court, acting without a jury, to determine the facts on conflicting evidence, and its finding sustained by any substantial evidence is conclusive on appeal. *Murray v. Osborne*, 33 Nev. 267; 111 P. 31.

The supreme court will not disturb find-

ings on conflicting evidence. *Botsford v. Van Riper*, 33 Nev. 156; 110 P. 705.

A finding on conflicting evidence is conclusive upon appeal. *Indiana M. Co. v. Gold Hills Co.*, 35 Nev. 158; 126 P. 965.

Finding of fact on conflicting evidence will not be reversed on appeal. *McStay Supply Co. v. Stoddard*, 35 Nev. 284; 132 P. 545.

Findings of the lower court upon conflicting evidence are binding upon the supreme court. *Round Mountain Co. v. Sphinx Co.*, 35 Nev. 392; 129 P. 308.

Court's finding of facts on conflicting evidence is conclusive on appeal. *Girton v. Daniels*, 35 Nev. 438; 129 P. 555.

Where there is a material conflict in the testimony, the decision of the trial court will be deemed conclusive on appeal. *R. B. F. M. Co. v. R. C. M. Co.*, 33 Nev. 307; 111 P. 30.

Where the evidence is conflicting, a finding of the trial court will not be disturbed on appeal. *Jensen v. Wilslef*, 36 Nev. 37; 132 P. 16; *Ann. Cas. 1914D, 1220.*

A finding by the trial court on conflicting evidence will not be disturbed on appeal, unless it is clear that a wrong conclusion has been reached. *Potosi Zinc Co. v. Mahoney*, 36 Nev. 390; 135 P. 1078.

Findings of the trial court based upon conflicting testimony are conclusive upon this court upon appeal. The decision of the district court in adverse proceedings based upon conflicting evidence is binding upon the supreme court and the federal land office. *Round Mountain v. Round Mountain Sphinx*, 36 Nev. 546; 138 P. 71.

Where there is a substantial conflict in the testimony, the appellate court will not substitute its judgment for that of the trial court, and will only interfere when it is clear that a wrong conclusion was reached. *Robinson M. Co. v. Riepe*, 37 Nev. 27; 138 P. 910.

The supreme court will not disturb the finding of the trial court on conflicting evidence, if there is any substantial evidence to support it. *Thompson v. Tonopah L. Co.*, 37 Nev. 183; 141 P. 69.

The judgment in a case tried without a jury will not be disturbed on appeal, though the evidence is conflicting, where it is supported by any substantial evidence. *Rehling v. Brainard*, 38 Nev. 17; 144 P. 167; *Ann. Cas. 1917C, 656.*

A judgment based on substantially conflicting testimony will not be disturbed on appeal. *Albee v. Albee*, 38 Nev. 191; 147 P. 452.

Where the testimony of the plaintiff on the trial of an action to foreclose a mechanic's lien was positive that a notice disclaiming liability for the work done was not posted, and the defendant's testimony was equally positive that it was posted, there was such a conflict in the testimony that the

determination of the lower court would not be disturbed. *Gaston v. Avensino*, 39 Nev. 128; 154 P. 85.

Where the testimony of defendant and his witnesses was controverted by plaintiff's witnesses it was the exclusive province of the court below to determine the facts from the conflicting testimony. *Carey v. Clark*, 40 Nev. 151; 161 P. 713.

A judgment will not be reversed for insufficiency of evidence where substantial, although conflicting, evidence supports it. *Picetti v. Wheeler*, 39 Nev. 437; 159 P. 522.

Where there is a substantial conflict in the evidence on a material issue, the trial court's determination will not be disturbed, if it is supported by substantial evidence. In *Re Gordon*, 40 Nev. 300; 161 P. 717.

Where the evidence was conflicting, and there was substantial evidence to support the decision of the trial court, the supreme court cannot disturb the findings. *Carey v. Clark*, 40 Nev. 151; 161 P. 713.

Where the evidence was conflicting, but the judgment of the trial court was supported by substantial evidence, its conclusion should not be disturbed. *Washoe Co. Bank v. Campbell*, 41 Nev. 154; 167 P. 643.

The supreme court will not disturb a finding of the lower court based upon conflicting evidence. *Clark Co. v. Francovich*, 42 Nev. 321; 176 P. 259.

(H) HARMLESS ERROR

111. Errors not affecting result.

Unless an error substantially affects the rights of the complaining party, so that it could be reasonably claimed that a different result might have been reached, had the error not occurred, it is harmless. *Peterson v. Silver Peak*, 37 Nev. 119; 140 P. 519.

112. Burden to show prejudice from error.

A party cannot complain on appeal of the admission of incompetent evidence which inures to his benefit. *Rehling v. Brainard*, 38 Nev. 16; 144 P. 167; Ann. Cas. 1917C, 656.

A party could not complain of the trial court's adoption of an erroneous measure of damages which inured to its benefit. *Turner L. Co. v. Tonopah L. Co.*, 38 Nev. 338; 145 P. 914.

113. Pleading—Demurrers or exceptions.

Where plaintiff's complaint was based on a record of a judgment rendered in a foreign state, the sustaining of a demurrer and dismissal of the complaint without affording an opportunity to amend was harmless, though contrary to the better practice, for an amendment could not change the record. *Keenan v. Keenan*, 40 Nev. 352; 164 P. 351.

114. Striking out or dismissing.

Court's refusal to strike out an irrelevant and immaterial paragraph in complaint was not prejudicial to defendant. *Pruett v. Cadigan*, 42 Nev. 329; 176 P. 787.

115. Selection and impaneling of jurors.

Any error in sustaining a challenge to a juror is harmless if no objectionable persons are on the jury as finally constituted. *Sherman v. Southern Pacific Co.*, 33 Nev. 385; 111 P. 416; 115 P. 909; Ann. Cas. 1914A, 217.

116. Conduct of trial or hearing.

In denying a motion to strike certain evidence, the trial court remarked, "I don't think the testimony does you any harm," and, in overruling an objection to an interrogatory, stated to appellant's attorney, "You are not on surrebuttal testimony, but I will allow it just to show you that we give every leeway possible, possibly more than the court should," and, in ruling on a motion to strike an answer, also stated to counsel, "I have known you for a long time, and I like you, and you are a good fellow; but when you come to the trial of a case, I know an attorney is ambitious; I know he wants to do everything in the world; and I admire that; but don't step beyond the bounds." Held, that while the trial judge's remarks were improper, they were not reversible error, in absence of a showing of prejudice to appellant therefrom. *Peterson v. Silver Peak*, 37 Nev. 117; 140 P. 519.

117. Rulings on questions to witnesses.

Allowing a witness, who had testified to making an examination immediately after the derailment of the train, to be asked on cross-examination as to whether or not the smoker was more broken or its occupants more frequently injured than in other cars, was harmless; his answer being that he did not know. *Sherman v. Southern Pacific Co.*, 33 Nev. 385; 111 P. 416; 115 P. 909; Ann. Cas. 1914A, 217.

The allowance of leading questions on the redirect examination of plaintiff is not reversible error where the matters elicited might have been elicited by a longer series of direct questions. *Anderson v. Berrum*, 36 Nev. 463; 136 P. 973.

In civil action for assault and battery, exclusion, on cross-examination of defendant, of question as to statement made by him, held cured by admission of testimony of one who heard the statement. *Wright v. Starr*, 42 Nev. 441; 179 P. 877.

118. Admission of evidence—Prejudicial effect.

A judgment will not be reversed because of the admission of incompetent evidence which was afterwards stricken out and which did not prejudice appellant. *Boydston v. Jacobs*, 38 Nev. 176; 147 P. 447.

Error in admitting or excluding evidence on material issues is reversible. *Peterson v. Silver Peak*, 37 Nev. 119; 140 P. 519.

In an employee's action for injuries, the admission of written statements signed by him after the accident was not error, where they contained nothing materially different from his testimony. *O'Brien v. L. V. & T. R. Co.*, 242 F. 850; 155 C. C. A. 438.

In an action on a life policy, where the defense was suicide, and a witness at the trial gave testimony tending to support defense, the erroneous admission of a transcript of his testimony given before the coroner and offered to impeach his testimony at the trial, must be deemed prejudicial, where the jury, after considerable deliberation, returned and asked that the transcript of the witness's testimony at the inquest be again read to them, which was done. *New York Life Ins. Co. v. Neasham*, 250 F. 787; 163 C. C. A. 119.

119. Defects supplied or objection removed subsequently.

Where the jury found that a contract for the sale of a safe had been mutually rescinded, the seller was not prejudiced by the admission of evidence as to a warranty that the safe was fireproof. *H. H. M. Safe Co. v. Baillet*, 38 Nev. 164; 145 P. 941.

120. On trial without a jury.

In an action tried by the court without a jury, the erroneous admission of certain documents in evidence is not ground for reversal, where it appears that the court did not give weight thereto as being prima facie evidence, but rested its conclusion on the testimony of the witnesses. *Rawhide Balloon Fraction M. Co. v. Rawhide Coalition M. Co.*, 33 Nev. 307; 110 P. 30.

Where incompetent evidence is admitted in a trial without a jury, a reversal is warranted only when the record shows that the competent evidence was insufficient to support the findings or that the improper evidence affected the result. *Rehling v. Brainard*, 38 Nev. 16; 114 P. 167; Ann. Cas. 1917C, 656.

121. Exclusion of evidence — Prejudicial effect.

In an action against defendant zinc mining company for injuries to one employed as a mucker by an explosion, any error in excluding a question to plaintiff on cross-examination whether his uncle did not state in the presence of an officer of defendant that the plaintiff was a miner could not have prejudiced defendant, where the evidence was conflicting whether defendant was informed by plaintiff, or by his uncle with his knowledge, that plaintiff was a miner, and defendant's books showed that plaintiff was given a miner's wages at the start, but his pay was reduced to that of a mucker six days thereafter, at which wages he continued to work. *Hochschoultz v. Potosi Zinc Co.*, 33 Nev. 198; 110 P. 713.

122. Instructions to jury—Prejudicial effect.

In an action for the wrongful ejection of a passenger holding such a ticket, an instruction requiring the company to exercise the highest degree of care, if erroneous, was harmless, since the company would be liable under such circumstances if only required to exercise ordinary care. *Forrester v. S. P. Co.*, 36 Nev. 250; 134 P. 753; 48 L. R. A. (N.S.) 1.

In action involving validity of location on public mineral land, an erroneous instruction as to defendants' right to locate on the land in question does not justify a reversal where, eliminating the finding made on such instruction and the issue to be determined thereby, plaintiffs' right to location was determined by finding on other issue not affected by the instruction. *Nelson v. Smith*, 42 Nev. 303; 176 P. 261; 178 P. 625.

123. Applicability to issues and evidence.

Where instructions are framed, without reference to the issues or evidence, and are calculated to mislead, or are erroneous under the facts and evidence, and prejudicial, they constitute reversible error. *Cutler v. Pittsburg Silver Peak*, 34 Nev. 46; 116 P. 418.

124. Error cured by verdict or judgment.

Where, under the admitted facts, the verdict rendered was justified, the error, if any, in a charge as to the duty of the jury to distrust the evidence of any witness who had wilfully sworn falsely to any material matter was not prejudicial to the defeated party. *Henningsen v. Tonopah and Goldfield R. R. Co.*, 33 Nev. 209; 111 P. 36; 119 P. 774; 29 Ann. Cas. 1008.

In an action against a corporation and an individual defendant for injuries, the court charged that, if the jury found from the evidence that plaintiff was entitled to recover from the defendant corporation for injuries as alleged, the jury should award plaintiff such damages, not to exceed \$15,000, which, in the jury's opinion, would compensate him for the pecuniary damages proximately caused him by the injuries complained of. Held, that since the verdict was for plaintiff against both defendants, the corporation could not complain that the instruction referred to it alone, and the individual defendant could not complain, since he was not personally referred to therein. *Cutler v. P. S. P. M. Co.*, 34 Nev. 45; 116 P. 418.

125. Findings by court or referee.

Where there are sufficient findings on issues made in the case to support the judgment, it is immaterial that there is no finding, or an erroneous finding on some other issue, which, if made, or differently made, would not compel any different conclusion from that reached by the findings which were actually made. *Nelson v. Smith*, 42 Nev. 303; 176 P. 261; 178 P. 625.

Appellant company held not prejudiced by trial court's refusal to find as requested, especially in view of exhaustive decision covering all issues, and additional finding, made before motion for new trial was disposed of, in conformity to particular issues of title to property in suit made by complaint and cross-complaint. *Moore v. Rochester W. M. Co.*, 42 Nev. 165; 174 P. 1017.

126. Judgment or order.

That the judgment as to appellant was

not in the form as provided by statute was not prejudicial. *Pruett v. Caddigan*, 42 Nev. 329; 176 P. 787.

XVII. DETERMINATION AND DISPOSITION OF CAUSE

(A) DECISION

127. Decision on consent.

Under Rev. Laws, 4835, authorizing the supreme court to reverse, affirm, or modify the judgment or order appealed from, the court has power to modify a judgment for delinquent taxes by reducing the amount of the recovery, and will so modify the judgment where the attorney-general, the district attorney, and the attorney for defendant stipulate for such modification, notwithstanding section 3660, imposing an additional penalty in suits for the collection of delinquent taxes, and providing that the judgment shall not be satisfied except by the payment of the tax, the original penalty, the costs, and the additional penalty therein prescribed in full. *State v. Nev. Copper Belt R. Co.*, 41 Nev. 220; 168 P. 737.

(B) AFFIRMANCE

128. On motion—Grounds.

Judgment was entered July 16, 1910, and notice of appeal was filed and served July 20, and statement on appeal was filed August 6, 1910. The record on appeal was filed January 2, 1911. After being passed for several terms, the case was set for hearing for January 30, 1913, and when called appellant's counsel asked for further time to file a brief, without offering any excuse for not filing it before. The case was continued to March 25, with fifteen days to file a brief. On that day the argument was further continued to June 25, for illness of counsel, with sixty days to file a brief, and on June 25 a further extension of thirty days to file brief was given. No brief was ever filed. Held, that a motion to affirm for want of prosecution should be granted. *Arnold v. Florence-Goldfield*, 36 Nev. 147; 134 P. 95.

129. Conditions in general.

Where the principles of a case are controlled by the decision in a former case in which a petition for rehearing is pending, the decision rendered in the case at bar will be subject to further order, dependent upon the final disposition of the petition for rehearing. *Porch v. Patterson*, 39 Nev. 251; 156 P. 439.

(D) REVERSAL

130. Technical, formal, or trivial defects or errors.

Under Rev. Laws, 5222, providing that where a special finding of facts is inconsistent with the general verdict the finding controls, and the court must give judgment accordingly, where, in an action against a street-railroad company for damages to plaintiff's automobile in collision, the jury failed to answer special interrogatories

whether anything prevented plaintiff from turning his automobile to the left off defendant's track when he saw the approaching street car, instead of to the right, as he did, after speeding up to pass vehicles obstructing that side of the road, considering the subjective influence upon plaintiff of the law of the road, and that it was necessary to decide instantly, on account of the speed of the approaching car, it could not be said as matter of law that plaintiff was negligent in turning to the right, and the jury could properly find that plaintiff was not negligent in taking the track at first, that defendant was negligent in running its car at an excessive speed, and that plaintiff acted reasonably in turning to the right, although he might have turned to the left with safety, so that the failure to find whether he could so have turned to the left, assuming that answer would have been that he could, in favor of defendant, was not so inconsistent with the general verdict for plaintiff as to call for its control by the failure to find, justifying reversal of judgment entered on the verdict for plaintiff under Rev. Laws, 5066, providing that no judgment shall be reversed for error not affecting the substantial rights of the parties. *Weck v. Reno Traction Co.*, 38 Nev. 287; 149 P. 65.

131. Ordering new trial, and directing further proceedings in lower court.

Under Comp. Laws, 2513, empowering the supreme court to review on appeal an order granting or refusing a new trial, and section 2515 providing that such court may reverse, affirm, or modify the judgment or order appealed from, and may, if necessary, order a new trial, etc., the court on reversing an order denying a new trial demanded for insufficiency of evidence to support the verdict may remand the case, with directions to the trial court to consider and pass on such ground anew. *Goldfield Mohawk M. Co. v. Frances-Mohawk M. & L. Co.*, 33 Nev. 491; 112 P. 42.

See *Certiorari*, 3; *Costs*, 13, 15, 16; *Criminal Law*, 90, 92, 96, 116; *Courts*, 4; *Divorce*, 18; *Exceptions*, *Bill of*, 1, 3, 5; *Justices of the Peace*, 6, 11, 13; *Trial*, 8.

APPEAL FROM COST BILL

See *Costs*, 17.

APPEAL FROM JUSTICE'S COURT

See *Costs*, 10; *Justice of the Peace*, 3, 11.

APPEALS

See *Justices of the Peace*, 11.

APPELLATE JURISDICTION OF SUPREME COURT

See *Criminal Law*, 89.

"APEX"

See Mines and Minerals, 13.

APPLIANCES

See Master and Servant, 5, 6.

APPOINTMENT OF GUARDIAN

See Insane Persons, 1.

**APPOINTMENT OF GUARDIAN
AD LITEM**

See Insane Persons, 2.

APPROPRIATION

See Waters and Watercourses, 8, 13, 21.

APPROPRIATION ACT

See States, 8.

APPROPRIATION OF WATER

See Waters and Watercourses, 1, 2, 3, 5, 9, 10, 12.

APPROPRIATIONS

See Schools and School Districts, 1.

ARBITRATION AND AWARD**I. SUBMISSION.**

1. Agreements to arbitrate—Effect on pending or subsequent action.

III. AWARD.

2. Impeachment or vacation—Motion to set aside or vacate.

I. SUBMISSION

1. Agreements to arbitrate—Effect on pending or subsequent action.

The mere fact that the parties agree to submit to arbitration did not work discontinuance and dismissal of the case in the absence of manifest intention of the parties to accomplish such result. *Nelson v. Reinhart*, 41 Nev. 69; 167 P. 690.

III. AWARD

2. Impeachment or vacation—Motion to set aside or vacate.

In an action for money loaned, where the parties agreed and did submit to arbitration stipulating for judgment entry according to the result of the arbitration, the court had jurisdiction to entertain a motion to set aside the award upon allegations that the arbitration was fraudulent and wrongful. *Id.*

ARGUMENT OF COUNSEL

See Criminal Law, 69.

**ARGUMENT OF DISTRICT
ATTORNEY**

See Criminal Law, 101, 112.

ARMY AND NAVY

See Elections, 1.

ARREST**I. IN CIVIL ACTIONS.**

1. Complaint or other pleading.
2. Discharge on motion—And proceedings thereon.

I. IN CIVIL ACTIONS

1. Complaint or other pleading.

Under civil practice act, secs. 146, 148 (Rev. Laws, 5088, 5090), providing for the arrest of a defendant in civil actions whenever about to depart the state or dispose of or remove his property with intent to defraud creditors, an order of arrest can be based both upon a verified complaint and an affidavit for arrest, and if both, taken together, are sufficient to justify the order. It is not improperly issued. *Ex Parte Boyd*, 36 Nev. 162; 134 P. 455; Ann. Cas. 1915A. 1277.

2. Discharge on motion—And proceedings thereon.

Under civil practice act, secs. 170-1 (Rev. Laws, 5112, 5113), providing that a defendant arrested in a civil action may apply to the court to vacate the order of arrest, if the only ground of the motion to vacate is because the affidavit upon which the order for arrest was based was insufficient, the court, on the hearing of the motion, will look alone to the affidavit, and if insufficient, defendant will be discharged; but, if the motion contains the further ground that the actual facts do not justify his arrest, the motion will be heard upon affidavits of defendant, counter affidavits of plaintiff, and any other evidence, and defendant is not entitled to be discharged if the proof justifies his being held, though the original affidavit was insufficient. *Id.*

ARREST AND CONVICTION

See Rewards, 2.

ASSAULT

See Rape, 2.

ASSAULT AND BATTERY**I. CIVIL LIABILITY.**

- (A) *Acts Constituting and Liability Therefor.*

1. Nature and elements—Consent.

- (B) *Actions.*

2. Pleading.

II. CRIMINAL RESPONSIBILITY.

- (A) *Offense.*

3. Nature and elements—Overt act.

I. CIVIL LIABILITY

- (A) *ACTS CONSTITUTING AND LIABILITY THEREFOR*

1. Nature and elements—Consent.

A recovery of damages may not be had

In a civil action for ordinary assault and battery by one who has consented to or participated in the acts causing the injury. *Wright v. Starr*, 42 Nev. 441; 179 P. 877.

(B) ACTIONS

2. Pleading.

Lack of consent being an essential element of a civil action for damages for assault and battery, it is unnecessary that defendant affirmatively plead consent in justification of the acts charged in the complaint and denied in the answer. *Id.*

II. CRIMINAL RESPONSIBILITY

(A) OFFENSES

3. Nature and elements—Overt act.

In a prosecution for murder, evidence held not to show that defendant made the first assault upon deceased; an "assault" requiring an attempt to carry the intent to assault into execution by an overt act. *State v. Huber*, 38 Nev. 253; 148 P. 562.

See Appeal and Error, 117.

ASSAULT WITH DEADLY WEAPON

See Criminal Law, 16.

ASSENT TO DEPOSITS WHEN BANK INSOLVENT

See Banks and Banking, 4, 8, 9.

ASSERTION OF RIGHT

See Equity, 2.

ASSESSMENT

See Mandamus, 16, 18; Taxation, 3, 5, 6, 7, 8, 10, 11, 12, 19.

ASSESSMENT OF DAMAGES

See Eminent Domain, 6, 9, 13.

ASSESSMENT ROLL

See Judges, 1.

ASSESSMENT WORK ON MINING CLAIMS

See Executors and Administrators, 5.

ASSIGNEE

See Sales, 15.

ASSIGNEE FOR RENT

See Landlord and Tenant, 5, 7.

ASSIGNEE OF JUDGMENT

See Garnishment, 1, 2.

ASSIGNMENT

See Liens, 1.

ASSIGNMENT OF ERROR

See Appeal and Error, 17, 18, 56, 63.

ASSIGNMENT OF RENTS

See Landlord and Tenant, 1.

ASSIGNMENTS

I. REQUISITES AND VALIDITY.

(B) *Mode and Sufficiency of Assignment.*

1. Notice to debtor.

I. REQUISITES AND VALIDITY

(B) MODE AND SUFFICIENCY OF ASSIGNMENT

1. Notice to debtor.

Until the debtor receives notice of an assignment, or until he has knowledge of such facts concerning the same as are sufficient to put him on inquiry, he may deal with the assignor as though no assignment had been made. *Washoe Co. Bank v. Campbell*, 41 Nev. 153; 167 P. 643.

ASSIGNMENTS OF ERROR

See Appeal and Error, 47; Criminal Law, 90.

ASSIGNMENTS WITHOUT DELIVERY

See Fraudulent Conveyances, 2.

ASSISTANCE, WRIT OF

1. Jurisdiction to issue.

1. Jurisdiction to issue.

A writ of assistance only issues as part of the process to carry out a final judgment. *Gamble v. Silver Peak*, 35 Nev. 319; 133 P. 936.

ASSUMPTION OF RISK

See Master and Servant, 11, 12.

ASSUMPTIONS

See Judgment, 2.

ATTACHMENT

I. NATURE AND GROUNDS.

(A) *Nature of Remedy—Causes of Actions, and Parties.*

1. Nature and purpose of remedy.

(B) *Grounds of Attachment.*

2. Fraudulent transfer or other disposition of property.

V. LEVY, LIEN AND CUSTODY AND DISPOSITION OF PROPERTY.

3. Mode and sufficiency of levy—Personal property.

4. Waiver, release or abandonment, and discharge or extinguishment of levy.

5. Expenses of keeping property and compensation of custodian.

VII. QUASHING, VACATING, DISSOLUTION OR ABANDONMENT.

6. Effect of dissolution.

IX. RETURN.

7. Operation and effect.

X. LIABILITIES ON BONDS OR UNDERTAKINGS.

8. Accrual or release of liability by breach of fulfilment of conditions—Bonds or undertakings to procure attachment.

9. Actions—Parties.

10. Actions—Damages.

I. NATURE AND GROUNDS

(A) NATURE OF REMEDY—CAUSES OF ACTION AND PARTIES

1. Nature and purpose of remedy.

The remedy by attachment is dependent upon statute. *Green v. Hooper*, 41 Nev. 12; 167 P. 23.

(B) GROUNDS OF ATTACHMENT

2. Fraudulent transfer or other disposition of property.

Stats. 1869, c. 112, sec. 123, as amended by Stats. 1907, c. 58, authorizes an attachment in an action on an unsecured contract, for the direct payment of money, and, if so secured, when such security has been rendered nugatory by the act of the defendant. In an action on a note secured by certain stock, an attachment was issued on an affidavit, which, after setting out the making of the note and defendant's failure to pay it, recited that it was secured by 50,000 shares of stock which were afterwards surrendered and placed in escrow by defendant and rendered nugatory. Defendant applied to dissolve the writ and filed affidavit that plaintiff accepted the stock certificate as security for the note, and at all times had retained the same as such security, that it had never been surrendered, and was still held as security for the indebtedness. Plaintiff, in opposition to the motion to dissolve, alleged that, after the certificate was delivered, it had never been transferred on the company's books, and was later withdrawn from the plaintiff and placed in escrow under an agreement for sale; either the proceeds or the certificate to be returned to plaintiff. Held, that such escrow agreement, if carried out, would enable plaintiff to deduct the proceeds of the stock from the note and interest and hence it did not render the security nugatory, so as to justify an attachment. *Bank v. Murphy*, 34 Nev. 461; 125 P. 365.

V. LEVY, LIEN, AND CUSTODY AND DISPOSITION OF PROPERTY

3. Mode and sufficiency of levy—Personal property.

Under Rev. Laws, 5152, providing that personal property capable of manual delivery shall be attached by taking it into custody, the custody required of the attaching officer is such as to enable him to retain and assert his power over the property so that it

cannot be withdrawn or taken by another without his knowledge. *Green v. Hooper*, 41 Nev. 12; 167 P. 23.

To effect an attachment of personal property it must be taken into the custody of the officer serving the writ, and unless that is done there is no existing attachment. *Id.*

4. Waiver, release or abandonment, and discharge or extinguishment of levy.

It is the duty of the attaching officer to take the property attached into his possession, and the lien of the attachment, as to subsequent purchasers and other creditors, is ineffective if the officer abandons his possession. *Id.*

When the personal property on which a levy of attachment has been made is left by the attaching officer in the possession of the debtor, it ceases to be in custodia legis and may be taken by other creditors. *Id.*

See Appeal and Error, 2; Bankruptcy, 1.

5. Expenses of keeping property and compensation of custodian.

A keeper of attached property must ordinarily look to the sheriff who attaches the property for his compensation, and in the absence of an express agreement with the plaintiff in the action he cannot recover from him. *Allen v. Ingalls*, 33 Nev. 281; 111 P. 34; 114 P. 758; 30 Ann. Cas. 755.

A settlement by a sheriff with his deputy for services as keeper of attached property, made without the knowledge of a third person employed by the deputy as keeper, is not binding on the third person, and does not preclude him from suing the sheriff for his services. *Id.*

Where a sheriff, in possession through a keeper of attached property, remained in possession after the debtor was adjudged a bankrupt, without notifying the keeper of any change in the status of the property, the keeper could recover from the sheriff for his services after the adjudication, though the sheriff thereafter was a mere bailee for the trustee in bankruptcy. *Id.*

VII. QUASHING, VACATING, DISSOLUTION OR ABANDONMENT

6. Effect of dissolution.

Where an attachment of personal property was dissolved by the court's order and was at once delivered to the debtor upon his receipt therefor, a chattel mortgage, previously filed, covering the property so released from attachment, became immediately effective. *Green v. Hooper*, 41 Nev. 13; 167 P. 23.

IX. RETURN

7. Operation and effect.

Where a judgment was had upon attachment of property of a nonresident and the personal service of summons, it cannot be presumed, as against the sheriff's return of service of the attachment, that there was an occupant upon the land attached. *Long v. Tighe*, 36 Nev. 129; 133 P. 60.

X. LIABILITIES ON BONDS OR UNDERTAKINGS**8. Accrual or release of liability by breach or fulfillment of conditions—Bonds or undertakings to procure attachment.**

The fact that an attachment lien was merged in a judgment lien and the property attached sold under execution does not relieve from liability upon the attachment bond. *Jaksich v. Guisti*, 36 Nev. 104; 134 P. 452.

A judgment for damages obtained for malicious prosecution of attachment is a bar to further action upon the bond. *Id.*

The defendant whose property has been wrongfully attached has an action under the statute upon the attachment bond, or, where the attachment was issued maliciously and without probable cause, defendant may proceed under the common law for malicious prosecution. *Id.*

9. Actions—Parties.

An action upon an attachment bond may be instituted without joining the sureties. *Id.*

10. Actions—Damages.

Where property has been sold under execution upon an erroneous judgment which is reversed upon appeal, the plaintiff is liable in damages to the defendant for the value of the property sold, such value to be determined as of the time of the execution of sale. *Id.*

See Judgment, 27; Malicious Prosecution, 1; Sheriffs, 2, 4, 5.

ATTEMPT

See Criminal Law, 2.

ATTENDANCE OF WITNESSES

See Costs, 4.

ATTORNEY AND CLIENT**I. THE OFFICE OF ATTORNEY.****(C) Suspension and Disbarment.**

1. Grounds for disbarment—Character and conduct.
2. Grounds for suspension—Contempt of court.
3. Proceedings—Evidence.
4. Proceedings—Punishment.

IV. COMPENSATION AND LIEN OF ATTORNEY.**(A) Fees and Other Remuneration.**

5. Contracts for compensation, making, requisites, and validity.
6. Allowance and payment from funds in court.
7. Actions for compensation—Evidence.
8. Actions for compensation—Trial.

I. THE OFFICE OF ATTORNEY**(C) SUSPENSION AND DISBARMENT****1. Grounds for disbarment—Character and conduct.**

For an attorney to publish and advertise

a pamphlet, the purpose of which is to attract nonresidents to the state to apply to its courts for divorce, through his agency as an attorney, that he may profit financially thereby, is "misconduct," within Comp. Laws, 2625, providing for removal or suspension of attorneys for misconduct. In *Re Schnitzer*, 33 Nev. 581; 112 P. 848; 33 L. R. A. (N.S.) 941.

2. Grounds for suspension—Contempt of court.

An attorney's action in knowingly and fraudulently procuring the service of summons in a divorce action in which he was counsel for plaintiff, upon another than defendant, and by falsely representing to the officer that the person served upon was said defendant, procured him to make a return of service showing falsely that the summons had been duly served upon said defendant, was misconduct sufficient for disbarment. In *Re Bailey*, 40 Nev. 139; 161 P. 512.

3. Proceedings—Evidence.

Evidence in a disbarment proceeding examined, and held to show that the respondent's statement to the trial court, in an action for divorce in which he appeared for plaintiff, tried in March, 1911, that he knew that the plaintiff therein had been residing in Reno since March, 1910, was false and that certain testimony was misleading; and hence he would be suspended. *Bar Association v. Scoular*, 34 Nev. 313; 123 P. 13.

When requested by a court for information it is the duty of an attorney to give the court the facts within his knowledge, and, if he give his conclusions, the facts upon which such conclusions are based. *Id.*

Rule in *Re Schnitzer*, 33 Nev. 581, followed. *Id.*

In a proceeding for disbarment of an attorney, evidence, consisting in part of an affidavit, held to support a charge that respondent by falsely and wilfully representing to an officer that affiant was defendant in a divorce action in which respondent was attorney for plaintiff, procured the service of summons on affiant and a false affidavit of service. In *Re Bailey*, 40 Nev. 139; 161 P. 512.

In a proceeding for the disbarment of an attorney, evidence that an affidavit of service of summons in a divorce suit, in which plaintiff was represented by respondent, associated with another, was altered after it was made so as to show a valid service, is insufficient, as against the positive sworn denial of the attorney, to show that he made the alteration. In *Re Winters*, 40 Nev. 355; 163 P. 244.

4. Proceedings—Punishment.

An attorney who published and advertised a pamphlet to attract nonresidents to the state to apply for divorce through him will be shown leniency, and suspended for only eight months, and till the further

order of the court; he having discontinued the advertising when his attention was called to his methods being condemned by the bar association of the city, and his being the first case of the character brought to the attention of the court. In *Re Schnitzer*, 33 Nev. 581; 112 P. 848; 33 L. R. A. (N.S.) 941.

IV. COMPENSATION AND LIEN OF ATTORNEY

(A) FEES AND OTHER REMUNERATION

5. Contracts for compensation, making, requisites, and validity.

Where attorney deals with client for his own benefit, transaction is not only regarded with suspicion, and closely scrutinized, but it is presumptively invalid for constructive fraud, a presumption to be overcome only by the clearest evidence. *Moore v. Rochester W. M. Co.*, 42 Nev. 164; 174 P. 1017.

Where an attorney, with the work he is required to do under his contract partially performed, exacts from his client an additional compensation under threat of withdrawing from the case, nothing but the best of reasons are sufficient to uphold the agreement. *Id.*

6. Allowance and payment from funds in court.

No question of attorney's fees being presented by the record, the matter of an allowance for such fees to counsel for appellant is entirely within the province of the trial court. In *Re Hartung's Estate*, 39 Nev. 200; 155 P. 353.

7. Actions for compensation—Evidence.

Where, prior to the rendition of services by attorneys, they submitted a schedule of fees calling for a retainer of \$200 a month to cover office work, including adjusting claims or settling suits out of court, as well as advising, drawing contracts, making forms, etc., and in an action for services testified that their office work for defendant amounted to an average of two hours a day, the court did not err in admitting evidence to show the value of such services. *Thompson v. Tonopah L. Co.*, 37 Nev. 183; 141 P. 69.

8. Actions for compensation—Trial.

Where attorneys, before rendering services, submitted to defendant a schedule of fees that would be charged, and the court, in an action for services rendered, found on expert evidence that the services were reasonably of the schedule values, such finding was sufficient to sustain a judgment to the extent of such values, without reference to whether the schedule was itself binding on defendant. *Id.*

See Appeal and Error, 102; Divorce, 17; New Trial, 1.

ATTORNEY-GENERAL

1. Compensation.

1. Compensation.

A general appropriation bill approved March 22, 1909 (Stats. 1909, c. 140), appropriated for the years 1909 and 1910, \$4,800 for salary of a deputy attorney-general. An act approved on the following day (Stats. 1909, c. 159) provided that the salary of a deputy attorney-general should be \$2,400 a year, payable out of the general fund in the same manner that salaries of other state officers are paid, which, under an earlier statute, was monthly. There was nothing in either of the acts in the nature of a relief bill. Held, that the intent was that the deputy attorney-general should be paid monthly in the future, and an incumbent who, during the part of the year before the approval of the act, had acted as stenographer in the attorney-general's office, drawing a salary from the state therefor, and had also acted as deputy attorney-general under a previous statute not providing compensation for such office, was not entitled under the acts to receive the designated salary for the portion of the year previous to their passage. *State ex rel. Fowler v. Eggers*, 33 Nev. 535; 112 P. 699.

See Receivers, 4; Banks and Banking, 6, 7.

ATTORNEY'S FEES

See Attorney and Client, 6; Judgment, 31; Replevin, 6.

ATTORNEY'S LICENSE TAX

See Criminal Law, 18.

AUTHORITY FOR JOINDER OF CAUSES OF ACTION

See Action, 3, 4.

AUTHORITY TO CONVEY

See Guardian and Ward, 1.

AUTOMOBILES

See Municipal Corporations, 6.

AWARD AS TO COSTS

See Costs, 13.

AWARD TO INJURED WORKMAN

See Mandamus, 1, 15.

BAGGAGE

See Carriers, 19.

BAIL

II. IN CRIMINAL PROSECUTIONS.

1. Right to release.

II. IN CRIMINAL PROSECUTIONS—Contd.

2. Right to release—Pending appeal or other proceeding for review.
3. Jurisdiction and authority to admit to bail.

II. IN CRIMINAL PROSECUTIONS

1. Right to release.

In capital cases, the court may grant bail where peculiar circumstances appear, or where the court in the exercise of sound judicial discretion determines that the proof is not evident and the presumption is not sufficiently great. *Ex Parte Nagel*, 41 Nev. 86; 167 P. 689.

2. Right to release—Pending appeal or other proceeding for review.

The criminal practice act, secs. 479, 500 (Comp. Laws, 4444, 4465), provides that no appeal from a conviction, unless it be of fine only, shall operate as a stay, but that after appeal a defendant who has been convicted may be admitted to bail in the discretion of the court. The defendant was convicted of larceny, and refused bail on application to the trial court. Held, that as the discretion of the trial judge is not to be disturbed, except for clear abuse, the defendant would not be admitted to bail by the supreme court, especially where the case would shortly be heard on its merits. *State v. Smith*, 33 Nev. 435; 111 P. 929.

Const. art. 1, sec. 7, providing that "all persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident, or the presumption great," was only designed to alter the common-law rule as to criminal cases before conviction, leaving the matter of bail after conviction discretionary. *State v. McFarlin*, 41 Nev. 105; 167 P. 1011.

Under Rev. Laws, 7294, providing that an appeal from a conviction shall stay the execution upon filing with the clerk of the court, in which the conviction shall have been had, a certificate of the judge of such court, or a justice of the supreme court, that there is probable cause for the appeal, and sec. 7314, providing that, after conviction of an offense not punishable with death, a defendant on appeal may be admitted to bail (1) as a matter of right, where the appeal is from a judgment imposing a fine, and (2) as a matter of discretion in all other cases, the element of probable cause for the appeal from a conviction and judgment of imprisonment is essential, and over which judicial discretion may be exercised on the question of bail. *Id.*

Rev. Laws, 7294, is in the nature of a supersedeas, whereby the execution of the judgment of conviction is stayed pending appeal, and, standing alone, has nothing to do with the question of admission to bail, which is governed by section 7314. *Id.*

3. Jurisdiction and authority to admit to bail.

Under Rev. Laws, 7294, 7314, where petitioner's appeal from a conviction for embezzlement sentencing him to imprisonment was properly taken in good faith, and it appears that newly discovered evidence, which was not available at or during the trial, is now available, and is of such a nature as might reasonably be expected to raise a reasonable doubt of guilt, petitioner will be admitted to bail by the supreme court. *Id.*

See False Imprisonment, 2.

BALLOTS

See Elections, 6, 10.

BANKRUPTCY

II. PETITION, ADJUDICATION, WARRANT, AND CUSTODY OF PROPERTY.

(C) *Involuntary Proceedings.*

1. Acts of bankruptcy—Preference by transfer by insolvent.

III. ASSIGNMENT, ADMINISTRATION, AND DISTRIBUTION OF ESTATE.

(B) *Assignment, and Title, Rights, and Remedies of Trustee.*

2. Property and rights vesting in trustee—Ownership or possession of property.

(C) *Preferences and Transfers by Bankrupt, and Attachment and Other Liens.*

3. Transfers—Validity as against trustee.
4. Fraudulent transfers—Intent of debtor.
5. Transfers void under state laws.
6. Dissolution of liens—Time of proceeding.
7. Subrogation of trustee to rights under lien.

(D) *Administration of Estate.*

8. Referees—Review of proceedings by judge.

(E) *Actions by or against Trustee.*

9. Evidence.

(F) *Claims against and Distribution of Estate.*

10. Review of referee's proceedings.

II. PETITION, ADJUDICATION, WARRANT, AND CUSTODY OF PROPERTY

(C) INVOLUNTARY PROCEEDINGS

1. Acts of bankruptcy—Preference by transfer by insolvent.

Since the court in determining whether an act of bankruptcy has been committed considers the intent of the debtor only, a preference which cannot be avoided because not having been accepted as such by the

creditor may yet be sufficient to support an adjudication in bankruptcy. *Alter v. Clark*, 193 F. 154.

III. ASSIGNMENT, ADMINISTRATION, AND DISTRIBUTION OF ESTATE

(B) ASSIGNMENT AND TITLE, RIGHTS, AND REMEDIES OF TRUSTEES

2. Property and rights vesting in trustee—Ownership or possession of property.

Under Comp. Laws, Nev. 3357, providing that a mortgage of real property shall not be deemed a conveyance whatever its terms so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale, where an absolute conveyance of real property was in fact a mortgage, the grantee was not entitled to the rents and profits so long as the mortgagors remained in possession; and hence, on their becoming bankrupts, such rents and profits passed to their trustee. *Alter v. Clark*, 193 F. 153.

(C) PREFERENCES AND TRANSFERS BY BANKRUPT, AND ATTACHMENT AND OTHER LIENS

3. Transfers—Validity as against trustee.

Comp. Laws, Nev. 1215, requires the county recorder to be satisfied by affidavits that all state and county taxes due and payable on moneys loaned have been paid before any mortgage or lien given as security therefor can be satisfied of record. Section 1084 requires the assessor to demand from each person a statement under oath or affirmation of all the real estate or personal property within the county owned or claimed by such person, and refusal or failure to make such statement on demand is a misdemeanor, and an affidavit knowingly false constitutes perjury. Held, that where defendant loaned money to bankrupts, receiving as security an absolute deed to certain real and personal property, which was in fact a mortgage, the fact that the security was made in the form of a deed to prevent the assessment and collection of taxes on the money loaned was collateral only, and did not so taint the security as to render it unenforceable as against the mortgagor's trustee in bankruptcy. *Id.*

The validity of a chattel mortgage against creditors represented by a trustee in bankruptcy must be determined by the law of the state in which the mortgage was made and where the property was situated. *In Re Petersen*, 252 F. 850.

4. Fraudulent transfers—Intent of debtor.

Under Rev. Laws, 1083, as to fraudulent conveyances, chattel mortgage given by debtor to wife twelve years after indebtedness to her was contradicted, no payments having been made, and intended to protect debtor's property from his creditors, was void as to his trustee in bankruptcy. *Id.*

5. Transfers void under state laws.

Comp. Laws, Nev. 2703, provides that every

sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels unless the same be accompanied by an immediate delivery and be followed by actual and continued change of possession of the things sold or assigned, shall be conclusive evidence of fraud as against the vendor's creditors, or creditors of the person making such assignment, or subsequent purchasers in good faith, and section 2705 declares that no mortgage of chattels shall be valid for any purpose as against other than the parties thereto unless there shall be appended or annexed thereto the affidavit of the mortgagor and mortgagee, or some person in their behalf, setting forth that the mortgage is made in good faith and given for a debt actually owing from the mortgagor, stating the amount and character of such debt, and that it is not made to hinder, delay, or defraud any of the mortgagor's creditors. Held, that where certain deeds which were in fact mortgages purported to convey chattels as well as real estate, but there was neither delivery of the chattels to the mortgagee nor affidavit as required by section 2705, the deeds, in so far as they were mortgages of the personal property, were void as against the mortgagor's creditors and trustee in bankruptcy. *Alter v. Clark*, 193 F. 153.

6. Dissolution of liens—Time of proceeding.

Under the bankruptcy act of July 1, 1898, c. 541, 30 Stats. 565 (U. S. Comp. St. 1901, pp. 3422, 3450), only the attachment liens obtained within four months of the filing of the petition in bankruptcy are dissolved by the adjudication in bankruptcy. *Allen v. Ingalls*, 33 Nev. 281; 111 P. 34; 114 P. 758; 30 Ann. Cas. 755.

7. Subrogation of trustee to rights under lien.

An attaching officer, who after the court's order dissolving an attachment of personal property delivered it to the debtor on his receipt therefor, had no right or special property therein, so that there were no rights to which the debtor's referee in bankruptcy could be subrogated. *Green v. Hooper*, 41 Nev. 13; 167 P. 23.

(D) ADMINISTRATION OF ESTATE

8. Referees—Review of proceedings by judge.

If it is the purpose of counsel by agreement to set aside decision of referee in bankruptcy, they should do so by some direct and unequivocal action, not by attempting to review order without consulting referee, or securing any records from his office. *In Re Petersen*, 252 F. 846.

If counsel wish district court to review determination of referee in bankruptcy, record to be examined should be made up and submitted, under the bankruptcy act and the general orders in bankruptcy, and until this is done the court cannot review the proceedings before the referee. *Id.*

On review of order of referee in bankruptcy, agreement as to what conclusions should be drawn from evidence does not afford district court sufficient data to enable it to determine whether there has been misstatement of evidence, particularly when referee's summary of evidence is not submitted. *Id.*

A party to an order made by the referee on the merits cannot have a review of it, unless he pursues the mode prescribed in general order in bankruptcy No. 27. *Id.*

The bankruptcy act contemplates that the record on review of an order of the referee shall be made up by him and also by him certified to the district court. *Id.*

(E) ACTIONS BY OR AGAINST TRUSTEE

9. Evidence.

Where, in a suit by a bankrupts' trustee to set aside an alleged preference, the defendant testified that he did not know there were other creditors of the bankrupts than himself until the attachment suit was begun, such proof was not overthrown by evidence of the bankrupts that defendant knew that they were borrowing large sums of money from him. *Alter v. Clark* 193 F. 154.

In a suit to set aside an alleged preference, the burden is on the trustee to establish by a preponderance of the evidence the fact that defendant knew, or had reason to know, that the conveyance to him was intended as a preference. *Id.*

(F) CLAIMS AGAINST AND DISTRIBUTION OF ESTATE

10. Review of referee's proceedings.

On review of order of referee in bankruptcy sustaining objections to claim on note, secured by chattel mortgage and presented by bankrupt's wife, if existence of fraud as to creditors on part of bankrupt is still in issue, there should be a detailed summary of the evidence, not a mere statement of conclusions. In relation to the alleged fraud. In *Re Petersen*, 252 F. 846.

BANKS AND BANKING

I. CONTROL AND REGULATION.

1. Right of banking.
2. Power to control and regulate.

II. BANKING CORPORATIONS, AND ASSOCIATIONS.

(B) *Capital, Stock, and Dividends.*

3. Lien of bank on stock or dividends.

(D) *Officers and Agents.*

4. Rights and liabilities as to bank and stockholders—Nature and extent.

(E) *Insolvency and Dissolution.*

5. Constitutional and statutory provisions.
6. Remedies and proceedings on insolvency.
7. Assets and receivers on insolvency.
8. Criminal responsibility on insolvency—Offenses.

II. BANKING CORPORATIONS, AND ASSOCIATIONS—Contd.

(E) *Insolvency and Dissolution—Contd.*

9. Criminal responsibility on insolvency—Prosecution and punishment.

III. FUNCTIONS—DEALINGS.

(C) *Deposits.*

10. Relation between bank and depositor.
11. Title to and disposition of deposits—Trust funds.
12. Application of deposits to debts due bank or set-off by bank.
13. Set-off by depositor.
14. Lien of bank on deposits.

I. CONTROL AND REGULATION

1. Right of banking.

The business of banking is a lawful business, which it is the inherent right of every citizen to engage in. *Marymont v. Banking Board*, 33 Nev. 333; 111 P. 295; 32 L. R. A. (N.S.) 477; *Ann. Cas.* 1914A, 162.

2. Power to control and regulate.

Banking and other pursuits may be regulated in the public interest. *Id.*

The banking business is so essential to the public welfare that laws may be passed for its regulation. *State v. Wildes*, 37 Nev. 55; 139 P. 505; 142 P. 627.

II. BANKING CORPORATIONS AND ASSOCIATIONS

(B) CAPITAL, STOCK, AND DIVIDENDS

3. Lien of bank on stock or dividends.

Facts held to support a finding that the bank did not have knowledge of plaintiff's ownership at the time it acquired a lien on the stock while in the name of another. *Wright v. Washoe County Bank*, 251 F. 819; 163 C. C. A. 653.

Delay of a bank in enforcing a lien, which it had under its by-laws against the stock of an apparent owner for any indebtedness owing the bank, did not raise an equity in favor of a third person, who was actual owner of the stock, where the bank had no knowledge of such ownership. *Id.*

Where by-laws of bank gave it a lien on stock for any debts due it, the bank did not waive its lien by taking other security for a loan to a stockholder. *Id.*

(D) OFFICERS AND AGENTS

4. Rights and liabilities as to bank and stockholders—Nature and extent.

Unless specially authorized by the board of directors, the president or a director of a bank is not legally authorized to close the bank or to prevent the receipt of deposits by the bank. *Ex Parte Smith*, 33 Nev. 466; 111 P. 930.

(E) INSOLVENCY AND DISSOLUTION

5. Constitutional and statutory provisions.

The banking act of March 22, 1911, being a general and comprehensive act, working

over and covering most of the features of the general banking act of March 24, 1909, and evidently intended as a substitute for it, repeals the provisions of that act by implication, except as specifically continued in force. *Eureka Bank Cases*, 35 Nev. 85; 126 P. 655; 129 P. 308.

Section 16 of the general banking act of March 22, 1911 (Stats. 1911, p. 279; Rev. Laws. 631), having remodeled and carried over most of the provisions of section 22 of the general banking act of March 24, 1909 (Stats. 1909, p. 257), and having omitted the provision of section 22 making it a felony to publish any false statement of the amount of the assets and liabilities of a banking corporation, and the later act being a general and comprehensive one, working over the provisions of the earlier act, the provision making it a felony to publish such a statement is repealed and no longer in force. *Id.*

6. Remedies and proceedings on insolvency.

Under the police power the state may control the banking business and protect the depositors after a bank's failure, and may authorize the attorney-general or other officer to do so, and so from the passage of the act of March 2, 1913 (Stats. 1913, c. 204), authorizing the attorney-general to proceed as he may deem necessary in relation to the affairs or receivership of the State Bank and Trust Company, he could intervene in an action by the state to wind up its affairs, either to protect depositors or for the benefit of the state. *State v. Wildes*, 37 Nev. 55; 139 P. 505; 142 P. 627.

7. Assets and receivers on insolvency.

The receivership, being the essence of the judgment entered in pursuance of the statute of 1907 (Stats. 1907, c. 119) at the instance of the state as the party plaintiff, the state was interested in orders affecting compensation of the receiver, by reason of the police powers exercised in furtherance of public welfare, and was entitled to notice, as a party in interest, of any motions, subsequent to the final order creating the receivership, to fix the compensation of the receiver, for the reason that the same affected the force of the original judgment creating the receivership. *State v. Wildes*, 37 Nev. 57; 139 P. 505; 142 P. 627.

At the time orders fixing the compensation of the receiver, appointed under the provisions of the banking act of 1907 (Stats. 1907, p. 229), were made, there was no statute authorizing the attorney-general to oppose them, nor providing that he should be served with notice of motions to fix such compensation. *State v. Wildes*, 37 Nev. 55; 139 P. 505; 142 P. 627.

Since the passage of the act of 1913 (Stats. 1913, c. 204), the attorney-general is authorized to appear in the State Bank and Trust Company receivership case, in the name of the state, on behalf of the creditors. *Id.*

Though, when orders were made fixing

compensation of the receiver of the State Bank and Trust Company in an action by the state to wind up its affairs, the attorney-general was not authorized to appear therein, he became authorized by the act of March 2, 1913 (Stats. 1913, c. 204), allowing him to proceed as he might deem necessary in such action, and could move to set the orders aside because made ex parte, where the services of the receiver had not been terminated or his accounts closed. *State v. Wildes*, 37 Nev. 56; 139 P. 505; 142 P. 627.

With no law authorizing notice by publication, and applying Rev. Laws, 5367-5370, providing only for service of notice by personal delivery, by leaving a copy, and by mail and telegraph in certain cases, publication of notice of motions to fix compensation of the receiver of the State Bank and Trust Company did not cut off rights of the state or depositors or parties in interest from a hearing or assertion of their rights, or from proceeding to vacate the orders, by showing the allowance or claim to be excessive. *Id.*

If orders fixing compensation of the receiver of the State Bank and Trust Company, in an action by the state to wind up its affairs, were made after notice, they could be regarded as final and subject to attack only by appeal, but, if made without the personal service required by law, the state, under its police power to supervise the banking business, acting by the attorney-general pursuant to the act of March 2, 1913 (Stats. 1913, c. 204), providing for his intervention, and within the time prescribed by district court rule 45, could move to set them aside pursuant to Rev. Laws, 5084, for want of proper notice, and could appeal from an adverse decision, for the purpose of reducing excessive compensation allowed. *Id.*

8. Criminal responsibility on insolvency—Offenses.

There is nothing in the act of March 13, 1909 (Stats. 1909, c. 92), which by section 1 penalizes the receipt or the assent to the receipt of deposits by a bank officer, who knows the bank to be insolvent, and by section 2 provides that a bank officer having authority to close the bank or to prevent the receipt of deposits, and failing to exercise such authority, is deemed guilty of assenting to the receipt of deposits, which makes an officer of an incorporated bank criminally liable simply because he is such officer with knowledge of the bank's insolvency, or because deposits are being received for the bank by some other officer. *Ex Parte Smith*, 33 Nev. 466; 111 P. 930.

The title of the act of March 13, 1909 (Stats. 1909, c. 92), in addition to referring to the offenses declared, states that its purpose is to establish a rule of evidence in connection therewith. Section 2 makes the failure of a bank within thirty days after the receipt of deposits prima facie evidence of the officers' knowledge of its insolvency, and in a previous part it is

provided that any officer having authority to close the bank or to prevent the receipt of deposits, who does not exercise such authority, shall be "deemed" to have assented to the receipt of deposits. Held, that only the part of the section relating to the knowledge imputed from the bank's failure is evidential in character, while the word "deemed," as used in the section, means "adjudged" in the sense of constituting a crime, instead of a rule of evidence. *Id.*

Under the act of March 13, 1909 (Stats. 1909, c. 92), only such officers as were present at the receipt of deposits, or who actually received the deposits, or who had authority to close the bank or to prevent the receipt of deposits, could be guilty of the offense of assenting to the receipt of deposits. *Id.*

Where, under indictments and bench warrants under a statute making it a felony for any officer, director or person to accept or receive a deposit in any bank, when he knows or has good reason to know that the bank is insolvent, or for permitting, conniving at or assenting to the reception of deposits, it is sought to hold and punish directors and officers of a bank who are not residing in the county, and were not at the bank, and did nothing in regard to the receipt of deposits, on the assumption that, because they were such directors and officers, the inference would follow that they were receiving the deposits, assenting to and conniving at the reception of deposits which were being received by the bank through its cashier, they are entitled to be discharged because the statute nowhere by its terms provides any penalty against petitioners or persons for merely acting as directors or officers of a bank, whether solvent or insolvent, or when receiving deposits and insolvent, except officers or persons actually receiving deposits for the bank, knowing or having good reason to know that it is insolvent. *Eureka Bank Cases*, 35 Nev. 83; 126 P. 655; 129 P. 308.

The receipt in a private bank of a deposit by the teller is the receipt by the private banker, because he is the principal, the teller, the agent, and the deposit is the banker's private property; but the receipt of a deposit in an incorporated bank by the teller is a receipt by the corporation and the deposit becomes the property of the incorporated bank, not of the teller or other officers of the bank; and the teller or cashier actually receiving the deposit for an incorporated bank is not guilty of felony unless he knows, or has good reason to know, that the bank is insolvent, and he may not have the same knowledge regarding the value of the assets and the insolvency of the bank as the directors. *Id.*

A director or officer, when he is not specially authorized by the board of directors or stockholders, is not empowered to prevent the reception of deposits or to close a

bank which has long been doing business and is receiving deposits merely because he is such officer. *Eureka Bank Cases*, 35 Nev. 84; 126 P. 655; 129 P. 308.

Under the provisions of the statute, that any bank officer having authority to close the bank or to prevent the reception of deposits, who does not exercise such authority when he knows the bank to be insolvent, shall be deemed to have assented to the reception of deposits, the officer is not guilty of assenting to the reception of deposits merely because he is such officer, when he has not been authorized to close the bank nor to prevent the reception of deposits, and is absent and does nothing in regard to the deposits. Under the statute, the assenting to the reception of deposits implies the power to withhold assent; and an officer who is without this power and is absent and does not act in regard to the deposit, cannot be held guilty of assenting to the reception of a deposit. *Id.*

9. Criminal responsibility on insolvency—Prosecution and punishment.

An indictment charging the accused with assenting to the receipt of bank deposits was framed under the act of March 13, 1909 (Stats. 1909, c. 92), which by section 1 makes it a crime for a bank officer to receive deposits or to assent to the receipt of deposits when the bank is known to be insolvent, and by section 2 provides that any officer of an incorporated bank, having authority to close the bank or to prevent the receipt of deposits, who shall not exercise such authority when he knows that the bank is insolvent, shall be deemed to have assented to the receipt of deposits. The indictment contained no allegations that the accused had any authority to close the bank, or to prevent the receipt of deposits, or that the accused personally received deposits knowing the bank to be insolvent. Held, that, under section 2, considered with the direct definition of section 1 as to the offense of assenting to the receipt of deposits, the "assent" required by the statute implied permission, and presupposed some inherent power to withhold assent. *Ex Parte Smith*, 33 Nev. 466; 111 P. 930.

Under an indictment for assenting to the receipts of deposits by an officer of an incorporated bank, contrary to act of March 13, 1909 (Stats. 1909, c. 92), which by section 1 makes it a crime for any bank officer to receive or to assent to the receipt of deposits knowing the bank to be insolvent and by section 2 provides that any bank officer having authority to close the bank or to prevent the receipt of deposits, who does not exercise such authority when the bank is known to be insolvent, shall be deemed to have assented to the receipt of deposits, and making the failure of such bank within thirty days after the receipt of any deposits prima facie evidence of such officer's knowledge of its insolvency, the presumption of knowledge of insolvency

by its terms applies only to such officers as have power to close the bank or to prevent deposits. *Id.*

An indictment under Purdon's Dig. Pa. (13th ed.), p. 942, par. 193, making it a crime for an officer of an insolvent bank to receive deposits, is fatally defective if the names of the owners of a private bank are not given and there is no allegation that each is insolvent. *Ex Parte Rovnlaneck*, 41 Nev. 141; 168 P. 327.

III. FUNCTIONS AND DEALINGS

(C) DEPOSITS

10. Relation between bank and depositor.

The relation between a bank and its depositor is that of debtor and creditor, so that the title to money deposited passes at once to the bank and becomes a part of its general assets. *McStay Supply Co. v. Stoddard*, 35 Nev. 285; 132 P. 545.

11. Title to and disposition of deposits—Trust funds.

Where a principal permits his agent to deposit money to the credit of the agent's account in a bank, and neglects to give notice of ownership of the money until the bank's lien has attached for an indebtedness due from the agent, a notice thereafter given is too late and will not affect the bank's right to apply the money to satisfy its lien. *McStay Supply Co. v. Stoddard*, 35 Nev. 284; 132 P. 545.

12. Application of deposits to debts due bank or set-off by bank.

Where an agent to collect and remit for claims belonging to plaintiff, without authority, deposited the proceeds of the collections to his deposit account in a bank to which he was indebted, plaintiff was the equitable owner of such proceeds, and the bank had no authority after notice to apply the same to the agent's debt to it. *Id.*

13. Set-off by depositor.

No demand is necessary for a deposit in an insolvent bank in order to set it off against a note of the depositor in the hands of the receiver. *First Nat. Bk. v. Nye Co.*, 38 Nev. 124; 145 P. 932; Ann. Cas. 1917C, 1195.

14. Lien of bank on deposits.

A bank has a lien on all funds belonging to depositors deposited for any indebtedness owing to it by them. *McStay Supply Co. v. Stoddard*, 35 Nev. 284; 132 P. 545.

Where a principal permits his agent to deposit money in a bank without notice to the bank that the money belongs to the principal, and the agent checks out the money or subjects it to a lien on account of money borrowed from the bank, the loss is that of the principal and not of the bank. *Id.*

See Action, 1; Appeal and Error, 74, 110; Bills and Notes, 2, 3, 6; Constitutional Law, 20; Criminal Law, 1; Election of Remedies, 1.

BAR

See Criminal Law, 12.

BAR AGAINST TRUSTEE

See Limitation of Actions, 13.

BAR TO ACTION

See Judgment, 30, 37; Master and Servant, 35.

BASIS FOR JUDGMENT

See Judgment, 2.

"BELONGS TO"

See Husband and Wife, 3.

BENCH WARRANT

See Habeas Corpus, 3.

"BEQUEATH"

See Wills, 6.

BEQUEST TO FRATERNAL ORDER

See Charities, 1, 3.

BIAS OR PREJUDICE

See Grand Jury, 3.

BILL OF EXCEPTIONS

See Exceptions, Bill of; Appeal and Error, 47, 49, 50, 57, 62, 63; Criminal Law, 85, 96, 99, 108; Exceptions, 2, 4.

BILLS AND NOTES

I. REQUISITES AND VALIDITY.

(B) *Form and Contents of Promissory Notes and Due Bills.*

1. Certificates of deposit.

V. RIGHTS AND LIABILITIES ON INDORSEMENT AND TRANSFER.

(B) *Indorsement for Transfer.*

2. Nature of liability as indorser.

3. Indorsement in blank.

(C) *Assignment or Sale.*

4. Equities and defenses—Set-offs existing before transfer or notice.

VIII. ACTIONS.

5. Parties defendant.

6. Presumptions and burden of proof.

I. REQUISITES AND VALIDITY

(B) FORM AND CONTENTS OF PROMISSORY NOTES AND DUE BILLS

1. Certificates of deposit.

Certificates of deposit are promissory notes, and have the same force and effect as a promissory note; indorsers thereon being bound by the same rules that apply to indorsers on a note. *Jensen v. Wilslef*,

36 Nev. 37; 132 P. 16; Ann. Cas. 1914D, 1220.

V. RIGHTS AND LIABILITIES ON INDORSEMENT OR TRANSFER

(B) INDORSEMENT FOR TRANSFER

2. Nature of liability as indorser.

Where a certificate of deposit already indorsed in blank is negotiated by the holder, nothing that the holder can do will alter the liability of the indorser. *Jensen v. Wilslef*, 36 Nev. 38; 132 P. 16; Ann. Cas. 1914D, 1220.

3. Indorsement in blank.

A person who indorses a note in blank usually warrants the solvency of the parties. *Jensen v. Wilslef*, 36 Nev. 37; 132 P. 16; Ann. Cas. 1914D, 1220.

Under Rev. Laws, 2613, providing that every indorser, without qualification, warrants that on due presentment it shall be accepted or paid, and that, if dishonored, he will pay the amount thereof to the holder, one who indorses in blank a certificate of deposit is liable to the holder where the paper is dishonored owing to the insolvency of the bank. *Id.*

(C) ASSIGNMENT OR SALE

4. Equities and defenses—Set-offs existing before transfer or notice.

By express provision of the civil practice act, sec. 46, action on a non-negotiable note by its assignee is subject to any set-off or defense existing at the time of or "before notice of" the assignment. *First Nat. Bank v. Nye County*, 38 Nev. 124; 145 P. 932; Ann. Cas. 1917C, 1195.

VIII. ACTIONS

5. Parties defendant.

In an action against a county on its note, given a bank, by the assignee thereof, neither the receiver of the bank nor its preferred creditors are necessary parties; any questions of preference being for the receivership matter. *Id.*

6. Presumptions and burden of proof.

In general, where an indorser contends that his indorsement was understood to be other than a warranty of payment, he has the burden of proving the same. *Jensen v. Wilslef*, 36 Nev. 38; 132 P. 16; Ann. Cas. 1914D, 1220.

BILLS FOR ACCOUNTING AND DISCOVERY

See Action, 4.

BOARD OF PARDONS

See Pardon, 1.

BOARDS OF COUNTY COMMISSIONERS

See Counties, 4.

BONA-FIDE PURCHASER

See Waters and Watercourses, 14.

BONA-FIDE RESIDENCE

See Divorce, 4, 11, 17.

BOND ON APPEAL

See Appeal and Error, 32, 33; Costs, 14.

BOND OF GUARDIAN

See Executors and Administrators, 8.

BONDS

See Schools and School Districts, 3.

BONDS AND UNDERTAKINGS

See Appeal and Error, 35; Replevin, 4.

BONDS ON APPEAL

See Appeal and Error, 40.

BOOKS OF ACCOUNT

See Criminal Law, 36.

BOUNDARIES

I. DESCRIPTION.

1. Relative importance of conflicting elements.

II. EVIDENCE, ASCERTAINMENT AND ESTABLISHMENT.

2. Recognition and acquiescence.

I. DESCRIPTION

1. Relative importance of conflicting elements.

Natural monuments control directions. *Lyon County v. Storey County*, 34 Nev. 243; 117 P. 827.

It is a fundamental rule in construing conveyances that courses and distances give way to permanent monuments, and the northerly side line of a street, extended, is in effect a "permanent monument." *Carey v. Clark*, 40 Nev. 151; 161 P. 731.

II. EVIDENCE, ASCERTAINMENT AND ESTABLISHMENT

2. Recognition and acquiescence.

Where a dividing line was established between the property of plaintiffs and defendant by the act of one through whom plaintiffs deraigned title and was acquiesced in by defendant, in accordance with which they or their grantees occupied their respective lands for a time in excess of that prescribed by limitations, and, immediately upon the establishment of such line, defendant made valuable improvements with reference thereto, with the knowledge of the one who established the line, he and his successors in interest would be estopped from questioning its

correctness, notwithstanding the rule that when the intent is to establish the line according to the true boundary, and by mistake the parties agree on a line which does not conform thereto, the agreed line is not conclusive. *Small v. Robbins*, 33 Nev. 288; 110 P. 1128; 112 P. 274; 123 P. 770.

See Counties, 1; Evidence, 5; Public Lands, 9; Taxation, 22.

BOUNDARIES OF MINING CLAIMS

See Mines and Minerals, 10.

BREACH OF CONTRACT

See Carriers, 10, 11; Contracts, 8; Damages, 6; Joint Adventures, 3.

BREACH OF CONTRACT OF JOINT ADVENTURES

See Limitation of Actions, 2.

BREACH OF CONTRACT TO DELIVER CAPITAL STOCK

See Corporations, 1.

BREACH OF DUTY

See Executors and Administrators, 11.

BREACH OF DUTY BY JOINT ADVENTURER

See Trusts, 2, 3.

BREACH OF FENCING CONTRACT

See Damages, 8.

BREAKING

See Criminal Law, 105.

BRIEFS

See Appeal and Error, 65, 68.

BRIEFS ON APPEAL

See Criminal Law, 99.

BROKERS

IV. COMPENSATION AND LIEN.

1. Failure to complete contract or transaction negotiated.

V. ACTIONS FOR COMPENSATION.

2. Pleading.

IV. COMPENSATION AND LIEN

1. Failure to complete contract or transaction negotiated.

Defendants employed plaintiff to procure a purchaser for stock in the P. Company. On September 9, 1909, after his contract had expired S. took an option to purchase the stock for \$125,000, and defendants

agreed in consideration of the services rendered in the sale of the stock to pay plaintiff 10 per cent commission. Subsequently they executed a compromise agreement, agreeing to pay plaintiff \$3,000 commission on the sale of such stock. S. did not exercise the option and made no payments on the stock. Held, that plaintiff was not entitled to a commission, as the so-called compromise was only a compromise of the amount, and it was to be paid only upon the actual consummation of the sale. *Christensen v. Duborg*, 38 Nev. 404; 150 P. 306.

V. ACTIONS FOR COMPENSATION

2. Pleading.

Plaintiff sued, alleging that prior to September 9, 1909, he performed services in procuring the sale of stock; that defendants agreed to pay him 10 per cent commission on all moneys received from the sale of the stock as received and thereafter, by way of compromise, agreed to pay him \$3,000 for such services. The evidence showed that two of the defendants, after S.'s option to purchase had expired and after they had purchased the stock of the third defendant, agreed with S., in consideration of the allotment to them of 3,000,000 shares of the stock of another company, to transfer to such company a controlling amount of the stock of the P. Company, and to convey to it certain land; that sales were to be made to develop certain properties and raise \$325,000, which was to be divided equally between the parties to the agreement; and that a sale of all or part of such 3,000,000 shares was made from which such two defendants realized a large sum of money. Held, that plaintiff could not recover, because of variance. *Id.*

BUILDING CONTRACTS

See Contracts, 5; Damages, 1.

BULK SALES ACT

See Fraudulent Conveyances, 1.

BURDEN OF ESTABLISHING LEGAL TITLE

See Quieting Title, 3.

BURDEN OF PROOF

See Criminal Law, 74; Marriage, 3; Reformation of Instruments, 1; Specific Performance, 4; Taxation, 5, 10.

BURGLARY

II. PROSECUTION AND PUNISHMENT.

1. Weight and sufficiency of evidence.
2. Trial—Instructions.

II. PROSECUTION AND PUNISHMENT**1. Weight and sufficiency of evidence.**

In a prosecution for burglary, where all the circumstances are indicative that the breaking or entry was without consent, it is immaterial that the owner or person in possession, during the course of his testimony, failed to testify specifically that the entry was without consent. *State v. Patchen*, 36 Nev. 510; 137 P. 406.

In a prosecution for burglary in the first degree, evidence held to justify verdict of guilty against a defendant. *State v. Whitaker*, 39 Nev. 159; 154 P. 927.

In a prosecution for burglary in the first degree, evidence held sufficient to justify finding that the mill was broken into in the nighttime, between sunset and sunrise, as defined by Rev. Laws, 6634. *Id.*

2. Trial—Instructions.

In a prosecution for burglary, where all the circumstances are indicative that the breaking or entry was without consent, if defendant desires to take advantage of the failure of the owner to testify directly to the fact of want of consent, he should raise the question at the proper time at the trial. *State v. Patchen*, 36 Nev. 510; 137 P. 406.

A requested instruction in part read: "The gist of the crime of burglary is the entering of a store with intent to steal the goods contained in the said store, regardless of the fact whether or not there was an actual stealing of the said goods." The trial judge drew a line through the word "regardless" and the words following and marked the instruction "Given as Modified." Held, not error, but the method of modification is criticized. *Id.*

Under Rev. Laws, 6635, it is presumed from an unlawful entry that the same was with the intent to commit larceny unless such entry is satisfactorily explained. *Id.* See Criminal Law, 49.

BUSSES

See Licenses, 2, 3.

BUYER

See Sales, 14.

CAGES IN MINES

See Master and Servant, 5, 6.

CANALS

See Waters and Watercourses, 18.

CAPACITY

See Wills, 2, 3.

CAPACITY OF PARTIES

See Mortgages, 2.

CAPACITY TO TAKE

See Religious Societies, 1.

CAPITALIZING

See Trial, 17.

CAPITAL STOCK

See Corporations, 1.

CAPITAL STOCK OF MINING COMPANY

See Corporations, 1.

CARDINAL RULE

See Wills, 4.

"CARELESS DISREGARD"

See Negligence, 12.

CARRIERS**I. CONTROL AND REGULATION OF COMMON CARRIERS.****(A) In General.**

1. Charges.

II. CARRIAGE OF GOODS.**(A) Delivery to Carrier.**

2. Effect of delivery and acceptance.

(C) Custody and Control of Goods.

3. Title to goods.

(D) Transportation and Delivery by Carrier.

4. Duties of carrier in making delivery.

5. Liability for failure or refusal to deliver.

(E) Delay in Transportation or Delivery.

6. Demurrage and liability of consignee or owner for delay.

(J) Charges and Liens.

7. Rates of freight.

8. Lien for charges.

IV. CARRIAGE OF PASSENGERS.**(B) Fares, Tickets, and Special Contracts.**

9. Conditions in tickets.

(C) Performance of Contract of Transportation.

10. Performance of special contract.

11. Actions arising out of breach of contract—Breach of contract.

(D) Personal Injuries.

12. Care required and liability of carrier.

13. Actions for injuries—Pleading.

14. Actions for injuries—Presumptions and burden of proof.

(F) Ejection of Passengers and Intruders.

15. Defective or invalid tickets.

16. Actions for wrongful ejection—Evidence.

17. Actions for wrongful ejection—Damages—Injuries to the person.

18. Actions for wrongful ejection—Instructions.

IV. CARRIAGE OF PASSENGERS—Contd.

(G) *Passengers' Effects.*

19. Limitation of liability.

(H) *Palace Cars—Sleeping-Cars.*

20. Ejection of passengers.

I. CONTROL AND REGULATION OF COMMON CARRIERS

(A) IN GENERAL

1. Charges.

Change in tariff schedule takes effect upon compliance with act to regulate railroads (Stats. 1907, p. 73, sec. 4a; Rev. Laws, 4552), providing for change upon 30 days' notice to commission, notwithstanding failure to post notice whenever a change is made as required by subdivision "b"; the only effect of such failure being liability by railroad for damages resulting therefrom under section 26. *Crumley v. Southern Pacific*, 42 Nev. 337; 177 P. 17.

II. CARRIAGE OF GOODS

(A) DELIVERY TO CARRIER

2. Effect of delivery and acceptance.

Where the owner of ore on a mine dump, anticipating that E., who was operating the mine, would endeavor to ship it, notified the railroad, and forbade the transportation of such ore, and the railroad, when E. offered the ore for transportation, required him to make affidavit that such ore was his, which he did, and the railroad transported the ore for him, such railroad was liable to the owner of the ore as for a conversion, being charged with constructive notice of the owner's right. *Dixon v. Southern Pacific Co.*, 42 Nev. 73; 172 P. 368; 177 P. 14.

(C) CUSTODY AND CONTROL OF GOODS

3. Title to goods.

Where an owner of ore notified defendant carrier that he owned it, but that he believed a third person intended to steal and ship it as owner, the carrier by avowing its intention to ship the ore if tendered to it waived its right to insist that the description of the ore was insufficient to give it notice of plaintiff's title in a subsequent suit by the owner against the carrier to recover for the conversion of the ore. *Dixon v. Southern Pacific Co.*, 42 Nev. 74; 172 P. 368; 177 P. 14.

(D) TRANSPORTATION AND DELIVERY BY CARRIER

4. Duties of carrier in making delivery.

It is the duty of a carrier on demand to deliver property in its possession to the true owner, whether it has been received from him or from another as consignor, notwithstanding that, in case of conflicting claims, a hardship will be imposed upon it in determining right of possession. *Dixon v. Southern Pacific Co.*, 42 Nev. 73; 172 P. 368; 177 P. 14.

5. Liability for failure or refusal to deliver.

The carrying of goods by a carrier from

terminus to terminus on the requirement of a person unlawfully in possession is not a conversion, though if the true owner intervenes before the goods are delivered, and demands them, and the carrier refuses to deliver them, it is liable in trover. *Id.*

(E) DELAY IN TRANSPORTATION OR DELIVERY

6. Demurrage, and liability of consignee or owner for delay.

Where the rules of a car service association, regularly filed with the interstate commerce commission, prohibited agents from storing carload freight in warehouses or on ground belonging to the railroad company without adding car service charges, the same as if the freight had been left in the car, the carrier's right to collect demurrage does not end when the shipment is unloaded, so that the car may be released for service, the rule being obligatory upon the carrier, and violations thereof constituting unlawful discriminations. *Horton v. Tonopah and Goldfield R. Co.*, 225 F. 406.

While changes in freight rates will not be given a retroactive effect, as to the contract of shipment, when the shipment has reached destination, and after the expiration of the free time allowed under the schedules filed with the interstate commerce commission, demurrage rates may be advanced and collected after such time without being objectionable as affecting pre-existing rights, since the shipper has no right under the contract of shipment to occupy the carrier's premises for storage purposes. *Id.*

(J) CHARGES AND LIENS

7. Rates of freight.

Upon a shipment of ore under tariff rates providing for determining the valuation from the gross assay value of the entire contents at destination after deducting the charges for assaying, etc., the carrier was not bound to accept the certificate of valuation furnished by the smelting company receiving it, where such certificate was not determined in accordance with the carrier's rules and regulations. *M. S. M. Co. v. L. V. & T. R. R. Co.*, 36 Nev. 62; 132 P. 1157.

Under a tariff fixing freight rates on ore at a valuation of not less than \$100 per ton, determined from the gross assay value of the entire contents according to the market price of the metal product at destination after deducting the charges for assay, smelting, and handling at the smelter, and then fixing the actual rate at certain figures based on the value per ton, ore on which the assay value per ton, exclusive of moisture, was \$57.88 as against \$63.96 per ton for dry ore, was properly valued for the purpose of determining the freight rate at its valuation per ton including the moisture content; moisture being included in the words "entire contents." *Id.*

8. Lien for charges.

Under Rev. Laws, Nev. 451 providing that uncalled-for freight may be sold for the charges, upon notice, in an action by the shipper for conversion of a shipment of lumber which had been sold to pay freight and demurrage, the burden was on the carrier to show that the sale was regularly conducted. *Horton v. Tonopah and Goldfield R. Co.*, 225 F. 406.

Where a carrier sold certain carload lots of lumber, title to which was in the plaintiff as consignor, but which consignee had refused to accept, for freight and demurrage charges, in one parcel, together with shipments belonging to others, to a purchaser who secretly acted as agent for the carrier, which was the real purchaser, it was a conversion of the lumber. *Id.*

Where the carrier has sold lumber shipped for freight and demurrage charges, after due notice and demand, and in strict compliance with the statute relating to the sale of unclaimed freight, there is no conversion. *Id.*

IV. CARRIAGE OF PASSENGERS**(B) FARES, TICKETS AND SPECIAL CONTRACTS****9. Conditions in tickets.**

A condition in a railroad ticket that in case of controversy the passenger agrees to pay the regular fare and apply for reimbursement at the office of the company, is unreasonable and void. *Forrester v. S. P. Co.*, 36 Nev. 250; 134 P. 753; 48 L. R. A. (N.S.) 1.

(C) PERFORMANCE OF CONTRACT OF TRANSPORTATION**10. Performance of special contract.**

One contracting and paying for a special train is entitled to the services of the train, and the carrier running it to a farther point under false representations, and attaching other cars to it, is guilty of a breach of the contract. *Burrus v. N. C. O. Ry.*, 38 Nev. 156; 145 P. 926; L. R. A. 1917D, 750.

11. Actions arising out of breach of contract—Breach of contract.

A railroad company, breaching its contract to furnish a special train to carry speedily for medical treatment a son of the person contracting for the train, is liable to the person for mental anguish caused by the breach causing delay in the son's removal, where the company was, at the time of the making of the contract, advised of the necessity of the speedy removal of the son for medical treatment and the danger to his life by any delay in removal. *Id.*

Where a railroad company, contracting to furnish a special train for the speedy removal of plaintiff's son to a place for medical treatment breached the contract by delaying the removal for three hours with knowledge of all the facts, a verdict for \$10,000 was excessive, though punitive damages could be allowed and compensa-

tion for mental anguish could be recovered, and the verdict must be reduced to \$5,000. *Id.*

(D) PERSONAL INJURIES**12. Care required and liability of carrier.**

The carrier owes to a passenger the duty to exercise the highest practical degree of care, skill, and foresight in the selection and use of suitable cars, motive power, appliances, and servants, and in the proper construction of its roadbed and track, and the operating and running of its trains. *Sherman v. Southern Pacific Co.*, 33 Nev. 385; 111 P. 416; 115 P. 909; Ann. Cas. 1914A, 217.

13. Actions for injuries—Pleading.

The complaint alleging injury to plaintiff while a passenger on defendant's train, through the derailment thereof, caused by the negligence of defendant and its servants, is sufficient, without pointing out the specific facts going to establish the negligence; a prima facie case of negligence being made out by showing the derailment. *Id.*

14. Actions for injuries—Presumptions and burden of proof.

It is incumbent on the carrier in an action for injury to a passenger from derailment of a train to repel by satisfactory proof every imputation of the slightest negligence. *Id.*

The derailment of the car in which the passenger is riding is prima facie evidence of the carrier's negligence, and it is its duty to know and show the facts. *Id.*

A presumption of negligence arises against a carrier immediately on plaintiff proving that he was injured by the derailing of the car in which he was riding, and it is for the jury to determine from the evidence in rebuttal as to whether the defendant sufficiently overcame this presumption. *Id.*

(F) EJECTION OF PASSENGERS AND INTRUDERS**15. Defective or invalid tickets.**

Where a train agent falsely charged that a passenger had stolen his ticket or bought it from a scalper, and ejected him from the train, the company is liable for the ejection, even though the ticket had been mistakenly punched as to the time limit more than once, where none of the other punch marks indicated a time limit subsequent to the purchase of the ticket as stamped on the back, and prior to the ejection from the train. *Forrester v. S. P. Co.*, 36 Nev. 249; 134 P. 753; 48 L. R. A. (N.S.) 1.

A provision in a railroad ticket that it should be void if it showed any alterations, or if more than one date was canceled, does not relieve the carrier from liability for wrongfully ejecting a passenger upon whose ticket extra punch marks had been placed by the ticket agent. *Forrester v. S. P. Co.*, 36 Nev. 250; 134 P. 753; 48 L. R. A. (N.S.) 1.

16. Actions for wrongful ejection—Evidence.

In an action for wrongful ejection of a passenger by a train agent, who had special authority to take up tickets and remove passengers, evidence held sufficient to show that the company had ratified the acts of the agent in ejecting the passenger, if such ratification was necessary to render it liable for exemplary damages. *Forrester v. S. P. Co.*, 36 Nev. 248; 134 P. 753; 48 L. R. A. (N.S.) 1.

17. Actions for wrongful ejection—Damages—Injuries to the person.

A passenger bound for San Francisco on a through ticket was wrongfully ejected by the train agent, who humiliated and insulted him by charging that he had stolen his ticket. He was put off at the sidetrack in the desert, though the company's agent knew that he was sick and did not have enough money to pay his fare to his destination. After his ejection, the district agent of the company refused to give him transportation, and further insulted him. As a result, the passenger was compelled to walk and ride in box and coal cars for a considerable distance in inclement weather, in consequence of which he contracted pneumonia, which resulted in consumption, eventually causing his death, while the action was pending. Held, that a verdict for \$11,115, of which \$1,115 was for railroad fare and medical and hospital bills, was not excessive as to require a reversal. *Forrester v. S. P. Co.*, 36 Nev. 249; 134 P. 753; 48 L. R. A. (N.S.) 1.

18. Actions for wrongful ejection—Instructions.

An instruction that the face of a ticket is conclusive between the train agent and the passenger, and that the former is not bound to listen to explanations on the part of the passenger where the ticket is defective, but may eject the passenger if he refuses to pay fare, is not applicable in an action for the expulsion of a passenger from a train, where the ticket was sufficient to entitle him to transportation even though extra punch marks had been placed thereon by mistake. *Forrester v. S. P. Co.*, 36 Nev. 250; 134 P. 753; 48 L. R. A. (N.S.) 1.

In an action for the wrongful ejection of a passenger who had a ticket, and who was sick and unable to pay his fare to his destination, an instruction that a common carrier of passengers must exercise the highest practicable degree of care that human judgment and foresight is capable of to make the passenger's journey safe, is proper. *Forrester v. S. P. Co.*, 36 Nev. 249; 134 P. 753; 48 L. R. A. (N.S.) 1.

(G) PASSENGERS' EFFECTS**19. Limitation of liability.**

If it be conceded that passenger carriers by specific rules which are reasonable, and not inconsistent with the statutes or with their duties to the public, and which are distinctly brought to the knowledge of the passenger, may protect themselves against

liability as insurers of baggage exceeding a fixed value except upon payment of an additional compensation proportioned to the risk, a contract so limiting the amount of liability does not relieve the carrier of liability for baggage lost through its negligence. *Zetler v. T. & G. R. R. Co.*, 35 Nev. 381; 129 P. 299.

The delivery of a passenger's baggage at carrier's baggage-room to a person not entitled to receive it is such negligence as makes the company liable, notwithstanding a contract limiting its liability to a fixed value. *Id.*

A carrier, by reasonable regulations brought to the knowledge of a passenger, may limit its liability as an insurer for the transportation of baggage to a specified value, except when paid additional compensation proportional to the risk, and \$100 is a reasonable amount in value above which an additional charge may be made. *Zetler v. T. & G. R. R. Co.*, 37 Nev. 496; 143 P. 119; L. R. A. 1916A, 1270.

A stipulation limiting a carrier's liability for loss of baggage to \$100, in the absence of payment of an excess charge for additional valuation, is unavailable, where the carrier has wilfully taken or withheld the baggage from the passenger, or has negligently delivered it to the wrong person. *Id.*

(H) PALACE CARS—SLEEPING CARS**20. Ejection of passengers.**

Railroad was not liable for ejecting passenger from drawing-room, where passenger not sharing room with another holder of first-class passenger ticket had but one such ticket, contrary to tariff schedule, and refused to vacate room or purchase another ticket. *Crumley v. Southern Pacific*, 42 Nev. 337; 177 P. 17.

See Evidence, 20; Trial, 7; Witnesses, 8, 9.

CASH VALUE

See Taxation, 7.

CATTLE BRANDS

See Animals, 1; Constitutional Law, 1. 41.

CAUSE OF ACTION

See Pleading, 3, 5.

CAUSES IN EQUITY

See Appeal and Error, 80.

CERTIFICATE OF DEPOSIT

See Bills and Notes, 1, 2, 3, 6.

CERTIFICATION TO ANOTHER COURT

See Justices of the Peace, 10.

CERTIORARI

I. NATURE AND GROUNDS.

1. Existence of remedy by appeal or writ of error.
2. Want or excess of jurisdiction.
3. Errors and irregularities.

II. PROCEEDINGS AND DETERMINATION.

4. Review—Scope and extent.

I. NATURE AND GROUNDS

1. Existence of remedy by appeal or writ of error.

Where, on the defendant's appeal from adverse judgment in justice's court to the district court on questions of law only the judgment was affirmed, defendant's right to certiorari was limited to a review of the district court judgment, from which no appeal lies; and certiorari would not lie from the supreme court to review the judgment of the justice. *State v. Pacific W. P. Co.*, 41 Nev. 501; 172 P. 380.

2. Want or excess of jurisdiction.

An erroneous order striking out a cost bill duly filed is in excess of the court's jurisdiction, and may be annulled on certiorari, especially as, if the error was not held jurisdictional, there would be no remedy where no appeal lies, although the mere lack of a remedy would not in itself require the error to be jurisdictional. *Radovich v. W. U. Tel. Co.*, 36 Nev. 341; 135 P. 920; 136 P. 704.

All presumptions are in favor of an order made by the court below where no reasons are given for the order, but this rule does not apply where the court below expressly bases its order upon an erroneous conception of fact or law. *Id.*

Certiorari will lie to review the erroneous assumption of jurisdiction by a district court, where a statutory step was omitted upon appealing to it from a justice court. *Yowell v. District Court*, 39 Nev. 423; 159 P. 632.

On original petition for certiorari to review a judgment of the district court, review is limited to whether the district court had jurisdiction to render any judgment, and whether it had jurisdiction to render the particular judgment rendered. *State v. Breen*, 41 Nev. 516; 173 P. 555.

3. Errors and irregularities.

In an action in the district court on appeal from justice court, where by statute it was the province and duty of the court to exercise its discretion in allowing items of cost before the same could become part of the judgment, even though no objections were filed, error in refusing to strike objections to the cost bill is not reviewable on certiorari. *McLeod v. District Court*, 39 Nev. 337; 157 P. 649.

The action of the court in a mechanic's lien suit in affirming a judgment for costs before a justice of the peace, even if irregular, cannot be reviewed on certiorari. *State v. Moran*, 42 Nev. 356; 176 P. 413.

II. PROCEEDINGS AND DETERMINATION

4. Review—Scope and extent.

On certiorari to review the act of the district court in striking items from the cost bill, the scope of the inquiry permissible is that of jurisdiction, and, if the act of the district court was within its jurisdiction, the inquiry ceases, and the writ has no function to perform; an authorized act of a court not being reviewable by certiorari. *McLeod v. District Court*, 39 Nev. 337; 157 P. 649.

See Justices of the Peace, 14.

CESTUI QUE TRUST

See Limitation of Actions, 10, 13.

CHANCE

See Street Railroads, 3.

CHANCERY BILLS

See Action, 4.

CHANCERY PROCEEDINGS

See Action, 1; Motions, 2.

CHANGE IN SCHEDULE OF RATES

See Carriers, 1.

CHANGE OF VENUE

See Criminal Law, 7, 8.

CHARACTER OF DECEASED

See Criminal Law, 61.

CHARACTER OF JUDGMENT AGAINST PARTNERS

See Partnership, 4.

CHARACTER OF RELATION

See Joint Adventures, 2.

CHARITABLE GIFT

See Perpetuities, 1.

CHARITABLE USE

See Charities, 1.

CHARITIES

I. CREATION, EXISTENCE, AND VALIDITY.

1. Validity of gifts and trusts.

II. CONSTRUCTION, ADMINISTRATION AND ENFORCEMENT.

2. Property included and title or interest acquired.
3. Conditions.

I. CREATION, EXISTENCE, AND VALIDITY

1. Validity of gifts and trusts.

A bequest of the income of an estate, to be paid over to a fraternal order annually, if within five years from testator's death the order established an orphans' home as provided therein, held not void as imposing no imperative duty upon the order to devote the money to a charitable use, since under the will the income was to be used in the maintenance of the home. In *Re Hartung*, 40 Nev. 263; 160 P. 782; 161 P. 715.

II. CONSTRUCTION, ADMINISTRATION, AND ENFORCEMENT

2. Property included and title or interest acquired.

A will gave the residue of the testator's estate to defendant fraternal order if, within five years from the date of his death, the fraternal order should establish a home for orphans and foundlings to be named after the testator's son, and providing, as an alternative, if the order should not accept, a similar gift of the income of the residue to a school district on condition they build an industrial school named after testator's son, or, in default of the district's acceptance, a similar gift to the state university to establish an industrial school fund named after testator's son. Held, that, the intention of the testator being to provide a "monument" or artificial structure for the purpose of preserving the memory of his son, the fraternal order was not entitled to the annual income of the estate in any event, but only so long as it maintained the home. *Id.*

3. Conditions.

A devise conditioned upon establishing by fraternal order of an orphans' home "worthy of its name" was satisfied by the establishment of a home which, considering the strength of the order in the state, the population of the state, and the general conditions existing therein, compared favorably with similar institutions of the order elsewhere. In *Re Hartung*, 40 Nev. 262; 160 P. 782; 161 P. 715.

A devise conditioned on the establishment of an orphans' home "near" a city was satisfied by its establishment within the city corporate limits; the apparent intention by such direction being to confine the location of the home to the vicinity of the city, and not to exclude it from the city limits. In *Re Hartung*, 40 Nev. 263; 160 P. 782; 161 P. 715.

Under a will devising the residue of an estate to an Independent Order of Odd Fellows, the income therefrom to be paid over to them annually, if within five years from testator's death the order established a home for orphans "worthy of its name," the words "worthy of its name" did not require the expenditure therefor of the sum of \$25,000 as specified for a school building in another paragraph of the will, but the will

made the order itself judge as to whether or not the home was worthy of its name, subject to the right of the courts to finally determine the question. *Id.*

CHattel MORTGAGES

I. REQUISITES AND VALIDITY.

(B) Form and Contents of Instruments.

1. Form of instrument—Certainty.
2. Form of instrument—Animals.

I. REQUISITES AND VALIDITY

(B) FORM AND CONTENTS OF INSTRUMENTS

1. Form of instrument—Certainty.

As against creditors and others who may acquire adverse rights, mortgages of specified number of articles or animals out of a large number is void for uncertainty, when particular articles are not separated or designated, so they can be distinguished from others of same kind; but it is enough if description, supplemented by suggested inquiries, enables parties to identify property. In *Re Petersen*, 252 F. 849.

The situs of the property covered by chattel mortgage is usually regarded as an important fact in its identification, which must be accomplished by the description, to validate the mortgage against creditors and others who may acquire adverse rights. In *Re Petersen*, 252 F. 850.

Chattel mortgage covering "seventeen head of work stock," etc., and books and accounts due mortgagor in the business conducted under his name, insufficiently described property to be void against creditors; neither location of property nor residence of mortgagor or mortgagee being given. *Id.*

2. Form of instrument—Animals.

A mortgage of property described as one span of colts, three years old, one gray and one bay, is defective; but if it further states the colts are in the mortgagor's possession on his farm, in a certain township, county, and state, the description is sufficient. *Id.* See Attachment, 6.

CHECKS

See Payment, 1.

CHILDREN

See Habeas Corpus, 10, 14.

CIRCUMSTANTIAL EVIDENCE

See Evidence, 24; Principal and Agent, 1.

"CITIZEN"

See Removal of Causes, 4.

CITIZENSHIP

See Removal of Causes, 4.

CITY COUNCIL

See Licenses, 2.

**CIVIL ACTION FOR ASSAULT
AND BATTERY**

See Appeal and Error, 117.

CIVIL ARREST

See Arrest, 1, 2.

CIVIL JURISDICTION

See Justices of the Peace, 1.

CIVIL LIABILITY

See Forcible Entry and Detainer, 1.

CIVIL PRACTICE ACT

See Pleading, 5; Statutes, 40.

CLAIM AGAINST ESTATE

See Stipulations, 1.

CLAIM AND DELIVERY

See Replevin, 4, 6.

"CLAIM JUMPING"

See Mines and Minerals, 10.

**CLAIM UNDER OR AGAINST
CONVEYANCE**

See Estoppel, 2.

CLAIMANTS

See Mechanics' Liens, 9, 11.

CLAIMS

See Mechanics' Liens, 9.

CLAIMS AGAINST ESTATES

See Executors and Administrators, 9, 10.

CLASSIFICATION OF COUNTIES

See Constitutional Law, 37.

CLASS LEGISLATION

See Constitutional Law, 24, 37.

CLEMENCY

See Witnesses, 11.

CLERICAL ERRORS

See Mines and Minerals, 6.

CLERKS OF COURT

1. Nature of office.
2. Creation and abolition of office.
3. Compensation and fees—Rights.
4. Compensation and fees—Writs, process and notices.

1. Nature of office.

The office of clerk of the supreme court is a constitutional office. *State v. Douglass*, 33 Nev. 82; 110 P. 177.

2. Creation and abolition of office.

Const. art. 4, sec. 32, providing that the legislature shall provide for the election by the people of a clerk of the supreme court, etc., provides, as amended in 1889, that the legislature shall have power to increase, diminish, consolidate, or abolish the following county officers: County clerks, county recorders, etc. Held, that by expressly designating certain offices which might be consolidated, the constitution intended to exclude all other offices, and hence the act of February 20, 1893 (Stats. 1893, p. 32, c. 35), providing that the secretary of state shall be ex officio clerk of the supreme court and ex officio state librarian, while sufficient to confer color of authority on the secretary of state acting ex officio clerk of the supreme court, it is without force as an amendment or repeal, by implication, of the statute (Comp. Laws, 1782, 1790 and 1793), providing for the election of a clerk of the supreme court in the manner other state officers are elected. *Id.*

3. Compensation and fees—Rights.

The fees of the clerk of the supreme court prescribed by Comp. Laws, 2469, allowing a fee for entering any motion, rule, or order, and a fee for filing each paper, are limited to orders and motions defined by section 3596, providing that every direction of the court made or entered in writing and not included in the judgment is an order, and an application for an order is a motion, and an offer of or objection to evidence, or a ruling admitting or rejecting evidence, or the routine adjournment of the trial, is not a motion and order, and the clerk may not recover fees therefor. *State v. Baker and Josephs*, 35 Nev. 301; 126 P. 345; 129 P. 452.

4. Compensation and fees—Writs, process, and notices.

The clerk of the supreme court in an original proceeding must on request issue subpoenas, and fees therefor will be disallowed unless the party against whom the charge is made applied for and obtained a written order for the subpoenas. *Id.*

CLERK'S FEES

See Costs, 6.

COCONSPIRATOR

See Criminal Law, 29, 32, 110.

COHABITATION

See Marriage, 3.

COLLATERAL ATTACK

See Judgment, 23; Prohibition, 5; Public Lands, 10; Receivers, 6.

COLLATERAL OFFENSES

See Criminal Law, 24.

COLLATERAL SECURITY

See Pledges, 1, 2.

COLLUSION

See Divorce, 4.

COMMERCE**III. MEANS AND METHODS OF REGULATION.**

1. Licenses and privilege taxes—Mercantile business.
2. Taxation of property employed in.

III. MEANS AND METHODS OF REGULATION

1. Licenses and privilege taxes—Mercantile business.

Rev. Laws, 3890-3894, inclusive (act approved March 24, 1905, sec. 1; Stats. 1905, c. 153), makes it unlawful for any itinerant merchant or peddler to offer goods for sale without first obtaining a license. Section 2 defines an itinerant merchant, etc., as one having no permanent place of business within the state, which is not regularly located and taxed. Section 3 fixes the amount of the license required. Section 4 provides that the act shall not apply to drummers representing wholesale houses; and section 5 provides that it shall not apply to the sale of farm products. Held, that the act violated art. 1, sec. 8, of the constitution of the United States relating to interstate commerce. *Ex Parte Taylor and Rounds*, 35 Nev. 504; 131 P. 133.

2. Taxation of property employed in.

The state may tax the intrastate business of a corporation engaged in intrastate and interstate commerce, but may not tax the interstate business by levy of a tax on the gross receipts of the corporation. *State v. Wells Fargo & Co.*, 38 Nev. 505; 150 P. 836.

While, under the commerce clause of the federal constitution, a state may not tax the privilege or act of engaging in interstate commerce, it can tax the carrier's property within the state, though chiefly employed in such commerce. *Wells Fargo & Co. v. State of Nevada*, 39 S. C. R. 62.

COMMISSIONER

See Counties, 3, 5.

COMMITMENT

See Criminal Law, 18.

COMMON CARRIERS

See Abatement and Revival, 1, 2; Actions, 20.

COMMON LAW

1. Nature and authority.
2. Application and operation.

1. Nature and authority.

While, in adopting the common law of England, it was adopted as modified by certain statutes enacted by Parliament prior to the Revolution, only those provisions of such statutes which are applicable to our conditions and in no way conflict with our statutory laws are in force in the state. *Esdén v. May*, 36 Nev. 612; 135 P. 1185.

2. Application and operation.

The common law, except as specially abrogated or except as unsuitable, prevails in Nevada. *State v. Hamilton*, 33 Nev. 418; 111 P. 1026.

See Husband and Wife, 1; Officers, 1.

COMMON-LAW MARRIAGE

See Marriage, 2, 3, 4; Trial, 21.

COMMON-LAW RULE

See Religious Societies, 1.

COMMON-LAW SENSE OF WORDS

See Statutes, 28, 37.

COMMON LIABILITY OF DEFENDANTS

See Action, 3.

COMMON NUISANCE

See Intoxicating Liquors, 6.

COMMUNITY ESTATE

See Husband and Wife, 4.

COMMUNITY PROPERTY

See Divorce, 23, 30; Guardian and Ward, 1; Homestead, 3; Husband and Wife, 1, 2, 3; Taxation, 20; Trial, 21.

COMPELLING ELECTION

See Pleading, 23.

COMPENSATION

See Attorney and Client, 5.

COMPENSATION OF INJURED WORKMEN

See Statutes, 14.

COMPENSATION OF OFFICERS

See Schools and School Districts, 1.

COMPENSATION TO INJURED WORKMEN

See Mandamus, 15.

COMPETENCY

See Witnesses, 1, 4.

COMPETENCY OF MEMBERS

See Grand Jury, 4.

COMPETENCY OF WITNESSES

See Criminal Law, 43.

COMPLAINT

See Divorce, 17; Executors and Administrators, 9, 10; Indictment and Information, 9; Mechanics' Liens, 14; Pleading, 5, 11, 17.

COMPLAINT FOR DAMAGES

See Master and Servant, 20.

COMPLIANCE WITH CONDITIONS

See Sales, 9.

COMPROMISE AND SETTLEMENT

See Estoppel, 5.

COMPUTATION OF DAMAGES

See Sales, 7.

CONCLUSIONS OF LAW

See Pleading, 2.

CONCLUSIVE EVIDENCE

See Appeal and Error, 103.

CONCLUSIVE SHOWING

See Habeas Corpus, 16.

CONCLUSIVENESS

See Appeal and Error, 110.

CONCLUSIVENESS OF JUDGMENT

See Judgment, 27, 31.

CONCLUSIVENESS OF TESTIMONY

See Evidence, 26.

CONCURRENT REMEDIES

See Elections, 19.

CONDEMNATION

See Eminent Domain, 8.

CONDITIONAL AFFIRMANCE

See Appeal and Error, 129.

CONDITIONAL DEVISE

See Charities, 1, 3.

CONDITIONAL SALES

See Sales, 2, 14, 15, 16, 17.

CONFESSION OF ACCOMPLICE

See Criminal Law, 2, 109.

CONFESSIONS

See Criminal Law, 46, 47, 95; Witnesses, 17.

CONFIRMATION OF SALE

See Estoppel, 6.

CONFLICTING CLAIMS TO PROPERTY

See Carriers, 3, 4.

CONFLICTING EVIDENCE

See Appeal and Error, 102, 103, 104, 110, 127; Criminal Law, 48, 117; Extradition, 4.

CONFLICTING JURISDICTION

See Justices of the Peace, 1.

CONSENT

See Assault and Battery, 1, 2; Divorce, 2; Homestead, 2, 3; Husband and Wife, 4; Justices of the Peace, 11.

CONSENT TO MODIFICATION OF JUDGMENT

See Appeal and Error, 127.

CONSENT TO TESTIFY

See Witnesses, 1.

CONSIDERATION

See Joint Adventures, 1; Sales, 3.

CONSIDERATION FOR EXTENSION OF LEASE

See Landlord and Tenant, 3.

CONSIDERATION FOR MODIFICATION OF LEASE

See Landlord and Tenant, 3.

CONSOLIDATION OF ACTIONS

See Justices of the Peace, 2.

CONSOLIDATION OF SUITS

See *Mechanics' Liens*, 11.

CONSPICUOUS PLACE

See *Mines and Minerals*, 27.

CONSPIRACY

1. Nature and elements.

1. Nature and elements.

An unlawful "conspiracy" is a combination between two or more persons to do an unlawful or criminal act, or to do a lawful act by criminal or unlawful means. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 501.

See *Criminal Law*, 29.

CONSPIRACY WITH PLAINTIFF'S ATTORNEY

See *Divorce*, 17.

CONSPIRATORS

See *Criminal Law*, 35.

CONSTABLES

See *Attachment*, 5; *Sheriffs*, 3.

CONSTITUTION

See *Homestead*, 3.

CONSTITUTIONAL AND STATUTORY PROVISIONS

See *Justices of the Peace*, 2.

CONSTITUTIONAL DEBATES

See *Constitutional Law*, 5.

CONSTITUTIONAL LAW

I. ESTABLISHMENT AND AMENDMENT OF CONSTITUTIONS.

1. Adoption—Legislative powers and proceedings.

II. CONSTRUCTION, OPERATION, AND ENFORCEMENT OF CONSTITUTIONAL PROVISIONS.

2. General rules of construction.

3. Intent and policy.

4. Meaning of language.

5. Matters extrinsic to instrument.

6. Subsequent legislative or executive construction.

7. Retroactive operation.

8. Operation as to laws previously in force.

9. Grant or limitation of powers—State constitutions.

10. Self-executing provisions.

11. Self-executing provisions—Relation to officers or official acts or proceedings.

II. CONSTRUCTION, OPERATION, AND ENFORCEMENT OF CONSTITUTIONAL PROVISIONS—Contd.

12. Self-executing provisions—Prohibitions and restrictions.

13. Validity of statutory provisions—Constitutionality.

14. Persons entitled to raise constitutional questions.

15. Persons entitled to raise constitutional questions—Estoppel or waiver.

16. Determination of constitutional questions—Necessity of determination.

17. Determination of constitutional questions—Presumptions in favor of constitutionality.

III. DISTRIBUTION OF GOVERNMENTAL POWERS AND FUNCTIONS.

(A) *Legislative Powers and Delegation Thereof.*

18. Nature and scope.

19. Encroachment on judiciary.

20. Encroachment on judiciary—Remedies and procedure.

21. Encroachment on executive.

22. Delegation of powers—To judiciary.

23. Delegation of powers—To local authorities.

(B) *Judicial Powers and Functions.*

24. Encroachment on legislature.

(C) *Executive Powers and Functions.*

25. Encroachment on legislature.

26. Encroachment on judiciary—Powers, duties and acts under legislative authority.

V. PERSONAL, CIVIL AND POLITICAL RIGHTS.

27. Constitutional guaranties.

28. Rights to acquire, hold and dispose of property.

VI. VESTED RIGHTS.

29. Estates and interests in property.

30. Rights of actions and defenses.

31. Remedies.

32. The law impairing the obligation.

VII. OBLIGATION OF CONTRACTS.

(C) *Contracts of Individuals and Private Corporations.*

33. Marriage and divorce.

34. Liens—Validity as against trustee.

IX. PRIVILEGES OR IMMUNITIES IN CLASS LEGISLATION.

35. Grants of special privileges or immunities.

36. Privileges and immunities of citizens of the United States.

37. Class legislation.

X. EQUAL PROTECTION OF LAWS.

38. Licenses and license taxes.

39. Civil remedies and proceedings.

XI. DUE PROCESS OF LAW.

40. Constitutional guaranties.

41. Criminal prosecution—Statutory creation or definition of offense.

42. Deprivation of property.

43. Taxation of property—Assessment and collection.

XI. DUE PROCESS OF LAW—Contd.

44. Creation or displacement of liens.
45. Civil remedies and proceedings—
Special or summary proceedings.
46. Civil remedies and proceedings—
Parties and process or notice.
47. Civil remedies and proceedings—
Right to trial by jury.
48. Administrative proceedings.

I. ESTABLISHMENT AND AMENDMENT OF CONSTITUTIONS

1. Adoption—Legislative powers and proceedings.

Under Const. art. 16, sec. 1, requiring that proposed constitutional amendments shall be "entered" on the respective journals of the senate and assembly, a proposed constitutional amendment need not be entered on the journal in full, it being sufficient if it be entered by an identifying reference. *Ex Parte Ming*, 42 Nev. 472; 181 P. 319.

II. CONSTRUCTION, OPERATION, AND ENFORCEMENT OF CONSTITUTIONAL PROVISIONS

2. General rules of construction.

In the construing of constitutions or statutes the intention of the convention or the legislature controls, to be determined in accordance with established rules. *Goldfield Con. M. Co. v. State*, 35 Nev. 178; 127 P. 77.

3. Intent and policy.

The object of construction, as applied to a written constitution, is to give effect to the intent of the people in adopting it, which intent is to be found in the instrument itself, as it is to be presumed that language has been employed with sufficient precision to convey it, and, unless it appears that the presumption does not hold in the particular case, nothing will remain but to enforce it. *Wren v. Dixon*, 40 Nev. 170; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

4. Meaning of language.

When a word is used in a statute or constitution, it is supposed that it is used in its ordinary sense, unless the contrary is indicated. *Ex Parte Ming*, 42 Nev. 472; 181 P. 319.

5. Matters extrinsic to instrument.

As an aid to determining the meaning of a provision of the constitution intended by its framers, the proceedings and debates in the constitutional convention may be considered. *Ex Parte Shelor*, 33 Nev. 361; 111 P. 291.

In the construction of a constitutional provision, it is not improper to examine the debates on the subject, though they are not authoritative, as it is the text of the constitution which was adopted. *Phillips v. Snowden Placer Co.*, 40 Nev. 66; 160 P. 786.

6. Subsequent legislative or executive construction.

Where a doubt exists as to the proper construction to be placed on a constitutional or statutory provision, courts will give weight to the construction placed thereon by other coordinate branches of the government. *State v. Cole*, 38 Nev. 215; 148 P. 551.

7. Retroactive operation.

The provisions of the constitution, state or federal, do not cover rights, privileges, and obligations not specified and not existing or understood at the time of its adoption, or not in force by long acquiescence, or by continued official or public approval. *Worthington v. District Court*, 37 Nev. 215; 142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696.

8. Operation as to laws previously in force.

Statutes may be nullified, in so far as future operation is concerned, by a constitution as well as by statute, as the constitution is the direct, positive, and limiting voice of the people, and may establish a policy, fix a limit to legislation on a given subject, or prohibit specified acts as being performed by public servants. *Wren v. Dixon*, 40 Nev. 170; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

9. Grant or limitation of powers—State constitutions.

The act of March 24, 1909 (Stats. 1908-09, c. 191), the "Banking Act," provided by section 2 that it should be unlawful under penalty for any corporation, partnership, firm, or individual to engage in the banking business except by means of a corporation duly organized for such purpose under the laws of the state. Sections 5 and 6 created a state banking board to have general supervision of banks and banking. Section 12 provided that it should be unlawful to engage in banking without obtaining a license from such board, which license should issue only to corporations duly organized to do a banking business. Held, that such act was in conflict with the constitution (art. 1, sec. 1) asserting rights to liberty, property and happiness; with article 1, section 8, guaranteeing due process of law, and with article 1, section 20, under which rights not enumerated are saved to the people. *Marymont v. Nevada State Banking Board*, 33 Nev. 333; 111 P. 295; 32 L. R. A. (N.S.) 477; Ann. Cas. 1914E, 162.

10. Self-executing provisions.

Const. art. 10, sec. 1, as amended in November, 1902 (Stats. 1901, p. 136), declared that the legislature should provide a uniform and equal rate of assessment and taxation to secure a just valuation of real and personal property, mining claims, etc., and that the acreage of patented claims should be assessed at the valuation of \$10 per acre. Stats. 1905, c. 58, provided for the assessment of patented mines at such

valuation. Article 10, sec. 1, as amended in 1906 (Stats. 1907, p. 501), provided that patented mining claims should be assessed at not less than \$500, except when \$100 in labor has been actually performed on such mine during the year. In addition to the tax on the net proceeds, and no legislation was passed pursuant to such provision until 1913. Held, that the constitutional amendment of 1906 was self-executing, at least as to the provision for taxation of patented mines, and absolutely nullified the statute of 1905, so that an assessment thereunder in 1909 was invalid. *Wren v. Dixon*, 40 Nev. 170; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

In determining when a constitutional provision is self-executing, there is a distinction between a declarative limitation of legislative power on a given subject, within which legislation may or should be enacted, and positive constitutional inhibition which no legislative act can relieve or modify; the former might require future legislation; the latter must, from its nature, be self-executing. *Wren v. Dixon*, 40 Nev. 171; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

11. Self-executing provisions—Relation to officers or official acts or proceedings.

The provisions of section 3 of article 19 of the state constitution that "the second power reserved by the people is the referendum, which shall be exercised in the manner provided in sections 1 and 2," apply to state elections. *State v. Brodigan*, 37 Nev. 37; 138 P. 914.

Const. art. 19, sec. 1, declares that, whenever 10 per cent of the voters shall express their wish that any law or resolution of the legislature shall be submitted to a vote of the people, the officers charged with the duty of announcing elections shall submit the question to be voted on. Section 2 declares that, if a majority of the voters at an election shall signify approval of a law or resolution, such law shall stand or, if the majority be against it, it shall be void. Section 3 declares that the electors reserve to themselves the power to propose laws and propose amendments of the constitution, and to enact or reject the same at the polls independent of the legislature, that the first power is the initiative, and no more than 10 per cent of the qualified voters shall be required to propose any measure, and that initiative petitions, except in municipal legislation, shall be filed with the secretary of state not less than thirty days before any regular session of the legislature, and the secretary shall transmit the same to the legislature as soon as it convenes, and that the second power by the people is referendum, which shall be exercised in the manner provided. Held, that, while this article declares that it shall be self-executing, yet it does not impose upon the secretary of state the duty to file a referendum petition for the submission of an act of the legislature to the

voters of a county at the next general election, and hence the filing of such a petition cannot be coerced by a mandamus for, though a constitutional provision declares it shall be self-executing, yet, if it does not provide for the manner of its execution, the execution must be provided for by statute. *Id.*

While it is provided that the provisions of article 19 "shall be self-executing, but legislation may be enacted to facilitate its operation," the further provisions that "the legislature may provide by law for the manner of exercising the initiative and referendum powers as to county and municipal legislation," makes it apparent that it was intended that further legislation should be enacted for carrying into effect that part relating to county matters, as the article itself makes no such provision. *Id.*

12. Self-executing provisions—Prohibitions and restrictions.

Prohibitory provisions in a constitution are usually self-executing to the extent that anything done in violation of them is void, and no legislation is required to execute such provision; but they are not self-executing when they merely indicate principles without laying down rules by which they may be given the force of law. *Wren v. Dixon*, 40 Nev. 171; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

13. Validity of statutory provisions—Constitutionality.

That a statute has for years been enforced by the courts, without its constitutionality being challenged, may be considered as a recognition of its constitutionality, and courts will seldom entertain questions of the constitutionality of a statute recognized as being valid in the adjudication of rights, and when the invalidity of the statute would lead to serious consequences. *Worthington v. District Court*, 37 Nev. 212; 142 P. 230; Ann. Cas. 1916E, 1097; *L. R. A.* 1916A, 696.

14. Persons entitled to raise constitutional questions.

Where a petition fails to show that authorized representatives of the Progressive party sought to preserve the rights of their party under section 8, Stats. 1915, c. 283, for the apportionment of convention delegates, held that petitioners for writ of prohibition cannot question the validity of section 3, providing for apportionment on the basis of vote for congressman at the last election. *Turner v. Fogg*, 39 Nev. 406; 159 P. 56.

One charged with violation of prohibition act could not complain of its unconstitutionality as providing justice of peace might assess fine in excess of limitation fixed by general statute prescribing his jurisdiction, where the punishment fixed was actually within limitation of the general statute. *Ex Parte Zwissig*, 42 Nev. 290; 178 P. 20.

The court will hear only those objecting to the constitutionality of a statute who are affected by its alleged unconstitutionality in the particulars complained of. *Bergman v. Kearney*, 241 F. 885.

15. Persons entitled to raise constitutional questions—Estoppel or waiver.

Where the requirement under Stats. 1908-09, c. 200, secs. 21, 22 (Rev. Laws, 2851, 2852), providing for removal of officers, that officer removed shall pay complainant \$500, is waived, the constitutionality of such requirement cannot be considered. *Gay v. District Court*, 41 Nev. 330; 171 P. 156.

16. Determination of constitutional questions—Necessity of determination.

It is the rule that constitutional questions will not be determined unless the determination is necessary for the disposition of the case. *Eureka Bank Cases*, 35 Nev. 86; 126 P. 655; 129 P. 308.

The court does not determine constitutional questions, when such determination is not necessary for the decision of the case. *State v. Boerlin*, 38 Nev. 39; 144 P. 738.

Courts will presume statutes to be valid and will not consider a question affecting their invalidity, unless essential to a determination of the case. *State v. Douglass*, 33 Nev. 82; 110 P. 177.

Constitutional questions, not necessary for an adjudication of the rights of the parties, will not be determined. *State v. Tax Commission*, 38 Nev. 112; 145 P. 905.

17. Determination of constitutional questions—Presumptions in favor of constitutionality.

In all cases of doubt every presumption and intendment will be made in favor of the constitutionality of an act of the legislature. *Quillel v. Strosnider*, 34 Nev. 9; 115 P. 177.

On an application for prohibition on the eve of election to annual Stats. 1915, c. 283, providing for the nomination of candidates by political parties, and the holding of primaries and conventions, the court will not speculate on the effect of possible contingencies on the validity of the act, nor annul it because contingencies may arise under section 11 of such act which would make the act impossible of enforcement. *Turner v. Fogg*, 39 Nev. 406; 159 P. 56.

When a statute is assailed as being unconstitutional, every presumption is in favor of its validity, all doubts must be resolved in its favor, and, unless it is clearly in derogation of some constitutional provision, it must be sustained. *Vineyard L. & S. Co. v. District Court*, 42 Nev. 1; 171 P. 166.

All doubts as to the validity of a statute must be resolved in favor of validity. *State v. Wells Fargo & Co.*, 38 Nev. 506; 150 P. 836.

III. DISTRIBUTION OF GOVERNMENTAL POWERS AND FUNCTIONS

(A) LEGISLATIVE POWERS AND DELEGATION THEREOF

18. Nature and scope.

Each of the three departments of government, the legislative, executive, and judicial, is supreme in the powers conferred upon it by the constitution, and no department has the right to control or interfere with the powers delegated to another department. *State v. Dickerson*, 33 Nev. 540; 113 P. 105.

19. Encroachment on judiciary.

Rev. Laws, 1513, defining the election duties of boards of county commissioners, providing for recounts by them, is not void as vesting judicial powers in such board. *McBride v. Griswold*, 38 Nev. 56; 146 P. 756.

20. Encroachment on judiciary—Remedies and procedure.

The appointment of a receiver for a bank in involuntary liquidation proceedings, and his investiture of the bank's property for the purpose of liquidation under the orders of the court, constituted a part of the judgment ordering the bank into involuntary liquidation. *State v. Wildes*, 34 Nev. 94; 116 P. 595.

The water law (Stats. 1913, c. 140), as amended by Stats. 1915, c. 253, providing that, subject to existing rights, the water of all sources of supply belongs to the public, providing for the appointment of a state engineer, to whom application may be made to appropriate any unappropriated water in a public stream, etc., and providing that the state engineer, on his own initiative, or on application of one or more users of water of any stream, may make an order for the determination of the relative rights of the water users, there being provision for notice, etc., is not violative of Const. art. 3, sec. 1, and art. 6, sec. 1, providing that the powers of government shall be divided into three separate departments, the legislative, executive, and judicial, etc., and that the judicial power of the state shall be vested in a supreme court, district courts, and justices of the peace, the act not conferring judicial powers on the state engineer, since the procedure before him merely paves the way for an adjudication by the district court. *Vineyard L. & S. Co., v. District Court*, 42 Nev. 2; 171 P. 166.

Stats. 1911, c. 150 sec. 79, regulating the affairs of banks and providing that the state bank examiner shall take possession of all banks and their property and accounts in the custody of any receiver previously appointed, and shall administer and settle the same, and all such receivers shall be required to turn over the same to the bank examiner, or a deputy appointed by him, constituted an interference with the duties and prerogatives of the court appointing such receivers and was unconstitutional as violating section 1, article 3, of

the constitution, providing that no persons charged with the exercise of powers properly belonging to one department shall exercise any functions appertaining to either of the others, except as expressly directed or permitted. *Id.*

21. Encroachment on executive.

The provision in the act entitled "An act to require the acceptance and collection of grants, devises, bequests, donations, and assignments to the State of Nevada," approved February 28, 1901 (Stats. 1901, c. 19), that "whenever any grant, devise, bequest, donation, or gift or assignment of money, bonds, or choses in action shall be made to this state, the governor is directed to receive and accept the same, so that the right and title to the same shall pass to the state." Imposes a ministerial duty upon the governor which could have been conferred as well upon any other officer or person, and which in no way conflicts with or pertains to the constitutional powers or prerogatives of the governor, excepting that it is his duty to enforce this and other statutes under section 7 of article 5 of the constitution, which provides that "he shall see that the laws are faithfully executed." He is nowhere empowered to set aside the law because he may not agree with its policy. He is as much unauthorized to prevent the reception of the bonds as if the legislature had directed the state treasurer instead of the governor to accept them for the state. *State v. Dickerson*, 33 Nev. 540; 113 P. 105.

Neither the legislature nor the courts can compel the governor to perform acts which would be in conflict with the powers and prerogatives conferred upon him by the constitution. As to these he is absolute. *Id.*

22. Delegation of powers—To judiciary.

Const. art. 3, sec. 1, providing that none of the three departments of government shall exercise functions belonging to the others except where expressly directed, makes it plain that the district court could be delegated powers other than those expressly mentioned by article 6, section 6. *Gay v. District Court*, 41 Nev. 330; 171 P. 156.

23. Delegation of powers—To local authorities.

Article 10 of the constitution, as amended and ratified at the general election in 1906, provides (section 1) that the legislature shall provide for uniform and equal taxation and for a just valuation for taxation of all property, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed; and, when patented, each patented mine shall be assessed at not less than \$500, except when \$100 in labor has been actually performed thereon during the year, in addition to the tax on the net proceeds, etc. Rev. Laws, 3621, provides that all property within the state shall be subject to taxation except: "Second—Unpatented

mines and mining claims; provided," etc. Held, that where \$100 worth or more of labor has been expended on a patented mining claim during any one year and prior to the time of assessment, the mine is exempt from taxation, except on the proceeds thereof. *Goldfield Con. M. Co. v. State*, 35 Nev. 178; 127 P. 77.

(B) JUDICIAL POWERS AND FUNCTIONS

24. Encroachment on legislature.

The court has no legislative power and cannot put into a statute a provision omitted by the legislature. *Mighels v. Eggers*, 36 Nev. 364; 136 P. 104.

While the courts may give effect to statutes by a fair and liberal construction of the language used, they cannot supply language to make them operative for a presumed purpose, unless from the reading of the entire act the intent is manifest. *State v. Brodigan*, 37 Nev. 245; 141 P. 988.

The legislature, representing the people of the state, has the sole authority to enact and repeal statutes, and in this regard its power is supreme in all matters of government, where not prohibited by constitutional limitations, state or federal. *State v. Dickerson*, 33 Nev. 540; 113 P. 105.

The court, in determining the validity of a statute, will not consider its policy, wisdom, or expediency, but will enforce it in accordance with the intention of the legislature, unless clearly in conflict with the constitution. *Worthington v. District Court*, 37 Nev. 214; 142 P. 230; *Ann. Cas.* 1916E, 1097; *L. R. A.* 1916A, 696.

Questions relating to the wisdom, policy, and expediency of statutes are for the people's representatives in legislature assembled, and not for the governor or the courts to determine. *State v. Dickerson*, 33 Nev. 540; 113 P. 105.

Stats. 1915, c. 135, amending act of March 17, 1911, by adding thereto section 3751, providing that it shall be unlawful for any person to have in his possession any hide from which the ears have been removed, or the brand obliterated, cannot be declared invalid by the supreme court, for the reason that it is unjust and oppressive, in that the owner and thief are placed in the same class. *State v. Park*, 42 Nev. 386; 178 P. 389; 3 Am. Law Rep. 75.

The courts, in considering the constitutionality of a statute, have nothing to do with the general policy of the law. *Vineyard L. & S. Co. v. District Court*, 42 Nev. 1; 171 P. 166.

The justice, wisdom, and expediency of laws are within the exclusive province of the legislature. *State v. Park*, 42 Nev. 386; 178 P. 389; 3 Am. Law Rep. 75.

The motives of the legislature are not subject to judicial inquiry, and its will is above the judgment of the courts as to the wisdom or policy of legislation. *City of Reno v. Stoddard*, 40 Nev. 537; 167 P. 317.

(C) EXECUTIVE POWERS AND FUNCTIONS

25. Encroachment on legislature.

The contention of the lieutenant- and acting governor that the acceptance as directed by the statute of repudiated bonds of a sister state, tendered to this state as a donation, would disturb the harmonious relations existing between the two states, and that for certain legal reasons the bonds cannot be collected, raises a question for the legislature in the first instance and for the judiciary in the second, neither of which is within the functions of the executive or justifies his refusal to accept the bonds. *State v. Dickerson*, 33 Nev. 540; 113 P. 105.

The governor may recommend the passage of laws, and may veto bills passed by the senate and assembly; but when an act not in conflict with the constitution passes both houses of the legislature, and is approved by him or passes over his veto, it becomes binding, and no person is above a law so enacted. As he cannot prevent its passage over his veto, he is powerless to set aside a statute after it has become a law. *Id.*

The legislature is the exclusive judge as to whether a law on any subject not enumerated in the constitution can be made general and applicable to the whole state, and the judgment of the legislature as to whether a general law is applicable or special, or local laws are required regarding subjects not so enumerated, is conclusive. *Quilici v. Strosnider*, 34 Nev. 9; 115 P. 177.

26. Encroachment on judiciary—Powers, duties and acts under legislative authority.

Stats. 1913, c. 140, providing for the establishment of water rights in proceedings before the state engineer, and authorizing such administrative officer to make decrees which, in the absence of appeal, are declared final, in so far as it attempts to make such decrees conclusive on the parties, is unconstitutional as impairing the constitutional power of the judiciary, under *Const.* art. 6, sec. 1, declaring that the judicial power of the state shall be vested in certain specified courts. *Ormsby County v. Kearney*, 37 Nev. 316; 142 P. 803.

The provisions of section 84 of the water law of 1913 providing: "Nothing in this act contained shall impair the vested right of any person, * * * nor shall the right of any person * * * be impaired or affected by any of the provisions of this act where appropriations have been initiated in accordance with law prior to the approval of this act," does not limit the power of the state engineer to determine for administrative purposes relative rights of water appropriators or users vested prior to the passage of the act, and to administer such prior acquired rights in accordance with such determinations subject to remedy by the courts for errors in determinations.

Ormsby County v. Kearney, 37 Nev. 315; 142 P. 803.

In so far as the water law of 1913 authorizes the state engineer to investigate and determine the relative rights of water appropriators or users upon any stream or stream system, or requires statements to be made by the several claimants of their respective claims and requires such claimants to support the same with proofs, and authorizes the state engineer to determine contests, or authorizes the control of the distribution of the waters of a stream to the persons found to be entitled thereto, the law is valid. *Id.*

Sections 18 to 51, inclusive, of the water law of 1913 are unconstitutional and void in that they attempt to invest the state engineer with powers to affect or destroy the property rights of water appropriators or users in violation of the due-process-of-law provisions of the federal and state constitutions, and because they attempt to invest the state engineer with judicial powers reposed in the courts, in violation of article 3, section 1, and article 6, sections 1 and 6, of the state constitution. *Ormsby Co. v. Kearney*, 37 Nev. 314, 316; 142 P. 803.

The water law (*Stats.* 1913, c. 140), as amended by *Stats.* 1915, c. 253, providing that, subject to existing rights, the water of all sources of supply belongs to the public, providing for the appointment of a state engineer, to whom application may be made to appropriate any unappropriated water in a public stream, etc., and providing that the state engineer, on his own initiative or on application of one or more users of water of any stream, may make an order for the determination of the relative rights of the water users, there being provision for notice, etc., is not violative of *Const.* art. 6, sec. 6, providing that the district courts shall have original jurisdiction in all cases which involve the title or the right of possession to, or the possession of, real property, even though a water right is real estate, since the entire proceedings under the water law amount to nothing until a copy of the order of determination of water rights of the state engineer is filed in the office of the clerk of the district court, thus operating as a complaint, the proceedings before the state engineer being nothing more than the routine of preparing and filing the complaint in the district court, which invests the latter court with jurisdiction to act. *Vineyard L. & S. Co. v. District Court*, 42 Nev. 2; 171 P. 166.

The Nevada water law of March 22, 1913, as amended by *Stats.* Nev. 1915, c. 253, confers upon the state engineer supervisory power over the distribution and use of water from the streams of the state. As incidental to the exercise of such power it authorizes him, on notice to all parties in interest and after making surveys and maps of a stream and on a hearing, to ascertain and determine the rights of users of water from the stream. He is then required to

file his order of determination, with the original evidence and transcript, with the district court, to apply to the court to have the matter set down for hearing and serve notice on all parties in interest. Pending the hearing, distribution of water is to be made in accordance with his order, unless a stay bond is filed and approved by the court. The order, claims of claimants, and exceptions to the order constitute the pleadings on which the case is to proceed as nearly as may be in accordance with the rules governing civil actions, and upon the evidence taken before the engineer and such further evidence as may be offered the court is to render a final decree determining the rights of users of water from the stream, from which decree an appeal may be taken to the supreme court. Held, that such provisions for hearing and determination by the state engineer are not in violation of article 3, section 1, of the state constitution, as conferring judicial power on an administrative officer, since his determination has none of the finality of a judgment, but is merely a preliminary step in the proceeding which culminates in a final decree of the district court. *Bergman v. Kearney*, 241 F. 885.

V. PERSONAL, CIVIL AND POLITICAL RIGHTS

27. Constitutional guaranties.

A statute enacted for the prevention of a public offense which the legislature deems essential to declare to promote the public good must be reasonably adapted to attain that end without unnecessarily invading personal or property rights. *State v. Park*, 42 Nev. 386; 178 P. 389; 3 Am. Law Rep. 75.

28. Rights to acquire, hold and dispose of property.

The constitution (art. 1, sec. 1) asserting that the acquisition and protection of property is an inalienable right, means more than the right to protect property already owned by the citizen. *Marymont v. Banking Board*, 33 Nev. 333; 111 P. 295; 32 L. R. A. (N.S.) 477; Ann. Cas. 1914A, 162.

VI. VESTED RIGHTS

29. Estates and interests in property.

Stats. 1911, c. 133, secs. 217, 218 (Rev. Laws, 3457, 3458), prohibiting the keeping of houses of ill-fame within 800 yards of schools, etc., is not unconstitutional, as interfering with vested rights, as against one conducting such place in accordance with an ordinance of the city, adopted pursuant to previous legislative authority. *Ex Parte Ah Pah*, 34 Nev. 283; 119 P. 770.

The Nevada water law of March 22, 1913 (Stats. 1913, c. 140), as amended in 1915 (Stats. 1915, c. 253), in providing that existing water rights acquired before its passage shall be ascertained and determined first by the state engineer and afterwards by the district court as therein prescribed, is not unconstitutional, as depriving the holders of vested rights; but such

provision is a proper and necessary one, to enable the state to ascertain and delimit new rights to be acquired under the act, and is within the legislative power. *Bergman v. Kearney*, 241 F. 884.

30. Rights of action and defenses.

The legislature is without power to take from an owner or claimant of property the right to defend an action by which it is sought to obtain a decree adjudging defendant to be without title to or right to the property so claimed. *Scott v. Day-Bristol M. Co.*, 37 Nev. 299; 142 P. 625.

31. Remedies.

No person has a vested right in any rule of law, nor can any one assert a vested right in any particular mode of procedure. *Vineyard L. & S. Co. v. District Court*, 42 Nev. 3; 171 P. 166.

32. The law impairing the obligation.

Stats. Nev. 1903, p. 207, c. 111, sec. 1, which provides that "it shall be unlawful for any person, firm or corporation to make or enter into any agreement, either oral or in writing, by the terms of which any employee of such person, firm or corporation, or any person about to enter the employ of such person, firm or corporation, as a condition for continuing or obtaining such employment, shall promise or agree not to become or continue a member of a labor organization, or shall promise or agree to become or continue a member of a labor organization," deprives the employer of the liberty to contract as to matters which may be vital to him, and therefore is invalid under the constitutional provision that "no one shall be deprived of life, liberty or property without due process of law." *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 501.

VII. OBLIGATION OF CONTRACTS

(C) CONTRACTS OF INDIVIDUALS AND PRIVATE CORPORATIONS

33. Marriage and divorce.

The constitutional prohibition against the impairment of obligation of contracts does not apply to divorces, which are under the control of the legislature, and the provision of the act of February 20, 1913 (Stats. 1913, c. 10), amending section 22 of the marriage and divorce act of 1861 (Stats. 1861, c. 33), as amended in 1875 (Stats. 1875, c. 22), by declaring that when, at the time a cause of divorce accrues, the parties are not both residents, the court cannot have jurisdiction, unless either party has been a bona-fide resident for not less than one year, does not impair the obligation of contracts, though it be construed as relating to a cause for divorce. *Worthington v. District Court*, 37 Nev. 214; 142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696.

34. Liens—Validity as against trustee.

A rule of the interstate commerce commission regulating freight rates and charges cannot be regarded as retroactive, unless it

impairs some right vested according to existing law. *Horton v. Tonopah and Goldfield R. Co.*, 225 F. 407.

IX. PRIVILEGES OR IMMUNITIES IN CLASS LEGISLATION

35. Grants of special privileges or immunities.

An ordinance, the purpose of which is stated in the title—directing the issue of a license to D. for the keeping or conducting of a restaurant at a designated place, with the privilege in connection therewith of selling, furnishing, serving or otherwise disposing of wine, malt and spirituous liquors in sealed packages—is void because it grants a special privilege to a single individual to conduct a private business of a character subject to general police regulations, and in which no public interest is subserved. *State v. Reno City Council*, 36 Nev. 334; 138 P. 110; 50 L. R. A. (N.S.) 105.

36. Privileges and immunities of citizens of the United States.

A statute of a state which provides that where, at the time of the accrual of a cause for divorce, the parties shall not be both bona-fide residents, no court shall grant a divorce, unless either party shall have been a bona-fide resident for not less than one year next preceding the bringing of the action, does not violate Const. U. S. art. 4, sec. 2, guaranteeing to citizens of each state all privileges and immunities of citizens in the several states; there being a distinction between citizenship and residence and the rights of citizens and residents, and the constitution guaranteeing no rights to citizens as to divorce. *Worthington v. District Court*, 37 Nev. 214; 142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696.

37. Class legislation.

Stats. 1913, c. 111, sec. 1, subd. b, making counties liable under the Workmen's Compensation Act, is not unconstitutional as discriminatory; the classification of counties being reasonable. *Nevada Ind. Com. v. Washoe Co.*, 41 Nev. 437; 171 P. 511.

X. EQUAL PROTECTION OF LAWS

38. Licenses and license taxes.

The act violates the fourteenth amendment and article 4 of section 2 of the constitution of the United States, relating to equal protection of the laws. *Ex Parte Taylor and Rounds*, 35 Nev. 504; 131 P. 133.

39. Civil remedies and proceedings.

The act of February 20, 1913 (Stats. 1913, c. 10) amending section 22 of the marriage and divorce act of 1861 (Stats. 1861, c. 33), as amended in 1875 (Stats. 1875, c. 22), by declaring that when, at the time a cause for divorce accrues, the parties shall not have been bona-fide residents, the court shall not grant a divorce, unless either party shall have been a bona-fide resident for not less than a year, provides for a clas-

sification of nonresidents at the time of the accrual of the cause of action for divorce, and the classification is reasonable, and does not conflict with the fourteenth amendment to the federal constitution guaranteeing the equal protection of the laws. *Worthington v. District Court*, 37 Nev. 213; 142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696.

XI. DUE PROCESS OF LAW

40. Constitutional guarantees.

It is not the rule in Nevada that there can be no due process of law unless the methods, means, and instrumentalities which were in existence at the time of the adoption of the Nevada constitution are adhered to. *Vineyard L. & S. Co. v. District Court*, 42 Nev. 2; 171 P. 166.

The fundamental requisites of "due process of law" are notice and an opportunity to be heard. *King Tonopah M. Co. v. Lynch*, 232 F. 486.

A state may not, by prescribing what shall constitute due process of law, subtract anything from the right recognized and established as due process in the federal constitution. *King Tonopah M. Co. v. Lynch*, 232 F. 485.

41. Criminal prosecution—Statutory creation or definition of offense.

Stats. 1915, c. 135, amending act of March 17, 1911, by adding thereto section 375½, providing that it shall be unlawful for any person to have in his possession any hide from which the ears have been removed, or the brand obliterated, deprives a person of his property without due process of law against the guarantees of section 1, article 14, of the federal constitution, and section 8, article 1, of the state constitution. *State v. Park*, 42 Nev. 386; 178 P. 389; 3 Am. Law Rep. 75.

42. Deprivation of property.

Water law (Stats. 1913, c. 140), as amended by Stats. 1915, c. 253, providing that, subject to existing rights, the water of all sources of supply belongs to the public, providing for the appointment of a state engineer, to whom application may be made to appropriate any unappropriated water in a public stream, etc., and providing that the state engineer, on his own initiative, or on application of one or more users of water of any stream, may make an order for the determination of the relative rights of the water users, there being provision for notice, etc., is not violative of federal Const. Amend. 14, prohibiting the taking of property without due process of law. *Vineyard L. & S. Co. v. District Court*, 42 Nev. 1; 171 P. 166.

43. Taxation of property—Assessment and collection.

There is no want of due process within the fourteenth amendment because of valuation by board for taxation being without notice to property owner; the mode of enforcing the tax (*Rev. Laws*, 3659-3665)

being by a judicial proceeding wherein process issues and an opportunity is afforded for a full hearing, and payment being enforced only after there is a judgment sustaining the tax. *Wells Fargo & Co. v. State of Nevada*, 39 S. C. R. 62.

Such section is not unconstitutional, since the legislature has power to enact laws to promote healthful conditions of work or freedom from undue oppression; and a contract which the state, in the legitimate exercise of its police power, has the right to prohibit is not within the protection of Const. U. S. Amend. 14, prohibiting the states from depriving any person of liberty or property without due process of law, especially in view of the further provision of that section that upon the trial of an action the defendant may set off the sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the person entitled thereto. *Lawson v. Halifax-Tonopah M. Co.*, 36 Nev. 591; 135 P. 611; 133 P. 261.

44. Creation or displacement of liens.

Workmen's Compensation Act (Stats. 1913, c. 111), sec. 1, subd. b, making counties subject thereto, is not unconstitutional as depriving counties of due process of law, the money required to be paid by the counties going for a public purpose of supporting the indigent, which is a legitimate charge on the people of the state and its various subdivisions. *Nevada Ind. Com. v. Washoe Co.*, 41 Nev. 437; 171 P. 511.

45. Civil remedies and proceedings—Special or summary proceedings.

The water law (Stats. 1913, c. 140), as amended by Stats. 1915, c. 253, is not unconstitutional, as permitting a taking of property without due process of law, in that, should an interested party fail to file objections, to the determination of the state engineer as to water rights, with the clerk of the district court in which the engineer files a copy of his order of determination, and the court enters a decree in accordance with such order, such decree will be tantamount to a taking of property without due process. *Vineyard L. & S. Co. v. District Court*, 42 Nev. 3; 171 P. 166.

46. Civil remedies and proceedings—Parties and process, or notice.

Rev. Laws, 5024, 5025, relating to service of process on foreign corporations, fail to provide means whereby proper notice should be given, and do not constitute due process of law. *Wildes v. Lou Dillon M. Co.*, 41 Nev. 364; 170 P. 1046.

A method of service of process, though prescribed by state statute, is not sufficient, if it does not amount to due process of law. *King Tonopah M. Co. v. Lynch*, 232 F. 485.

Rev. Laws, Nev. 5024, requires foreign corporations owning property or doing business in the state to appoint and keep in the state an agent upon whom process may be

served. Section 5025 provides that if any such company shall fail to appoint such agent, on the production of a certificate of the secretary of state showing the fact, which certificate shall be conclusive evidence of the fact, it shall be lawful to serve such company with any legal process by delivering a copy to the secretary of state, or, in his absence, to a deputy secretary of state. Held, that service thereunder on the secretary of state did not amount to due process of law, where neither plaintiff nor the secretary of state made any effort or attempt to notify the company, and it acquired no knowledge of the suit prior to judgment, or within the six months thereafter, within which it might have answered to the merits, though plaintiff knew the defendant was a Utah corporation, had brought a prior action against it, and two days before instituting the action in question made an affidavit in which he swore that he was familiar with its business and affairs. *King Tonopah M. Co. v. Lynch*, 232 F. 486.

47. Civil remedies and proceedings—Right to trial by jury.

Stats. 1908-09, c. 200, secs. 21, 22 (Rev. Laws, 2851, 2852), providing for summary trial in cases of removal of officers, does not violate the constitutional provision that one charged with crime is entitled to a jury trial, because the legislature has plenary power in such cases. *Gay v. District Court*, 41 Nev. 330; 171 P. 156.

48. Administrative proceedings.

The provisions of said act for notice and hearing, with the right to file exceptions to the determination of the engineer, even by those who fail or refuse to appear or submit evidence, are sufficient to constitute due process of law, and the act is otherwise constitutional. *Bergman v. Kearney*, 241 F. 885.

See Appeal and Error, 79; Clerks of Courts, 1, 2; Commerce, 1; Criminal Law, 108; Fines, 1; Intoxicating Liquors, 1; Officers, 2; Statutes, 1, 2; Waters and Watercourses, 1.

CONSTITUTIONAL LIMITATIONS

See Municipal Corporations, 2.

CONSTITUTIONAL PROVISIONS

See Statutes, 16, 19.

CONSTITUTIONAL RIGHT OF APPEAL

See Appeal and Error, 2.

CONSTITUTIONALITY OF STATUTE

See Eminent Domain, 9; Statutes, 16.

CONSTITUTIONALITY OF WATER LAW

See Waters and Watercourses, 7.

CONSTRUCTION

See Constitutional Law, 3, 5, 8, 10; Statutes, 24, 28, 33, 37, 39, 40; Wills, 4, 6, 8.

CONSTRUCTION OF AGREEMENT

See Joint Adventures, 1.

CONSTRUCTION OF DECREE

See Divorce, 29.

CONSTRUCTION OF DEEDS

See Deeds, 1, 3, 4.

CONSTRUCTION OF DEEDS BY PARTIES

See Deeds, 2.

CONSTRUCTION OF STATUTES

See Appeal and Error, 17, 65; Elections, 2; Justices of the Peace, 9; Limitation of Actions, 1, 7; Mechanics' Liens, 2; Statutes, 27, 34.

CONSTRUCTION OF WILLS

See Charities, 1, 2, 3; Wills, 5.

CONSTRUCTIVE FRAUD

See Attorney and Client, 5.

CONTEMPT

I. ACTS OR CONDUCT CONSTITUTING CONTEMPT OF COURT.

1. Disobedience to mandate, order, or judgment—Validity of mandate, order, or judgment.

I. ACTS OR CONDUCT CONSTITUTING CONTEMPT OF COURT

1. Disobedience to mandate, order, or judgment—Validity of mandate, order, or judgment.

Alleged violation of a void order of court does not constitute contempt of court, and prohibition will lie to prevent proceeding to punish for such alleged contempt. *McKlinon v. Harwood*, 35 Nev. 494; 130 P. 465.

CONTEMPT FOR FAILURE TO PAY ALIMONY

See Divorce, 25.

CONTEST

See Elections, 17, 18, 19; Wills, 3.

"CONTINGENT CLAIM"

See Executors and Administrators, 8.

CONTINUANCE

1. Pendency of other action.
2. Absence of party.

1. Pendency of other action.

Under Rev. Laws, 2227, providing that, at the time of filing the complaint and issuing the summons in a lien action, the plaintiff shall notify all persons claiming liens to exhibit proof, and that all liens not exhibited shall be deemed to be waived in favor of those exhibited, where lien claimants sued to enforce their lien, and gave proper notice to other claimants to exhibit their liens, and other claimants, who had an opportunity to exhibit their liens and had elected to institute an independent suit, appeared by attorney and stated that the other suit was pending for the foreclosure of their liens and that at the proper time they would appear and join in the foreclosure, the court very properly refused the claimants' continuance. *Daly v. Lahontan Mines Co.*, 39 Nev. 15; 151 P. 514; 158 P. 285.

2. Absence of party.

Where defendant, in a suit for divorce, was present with his counsel in court on March 28, when by his consent the case was set for trial April 4, without then informing the court of the necessity of his being absent so near that date as to prevent his presence at the trial, and it did not appear that his absence before the trial, which prevented his presence at the trial, was due to a court proceeding, denial of continuance because of his absence, supported by a telegram merely announcing his inability to be present because of guardianship proceedings, was not an abuse of discretion. *Neven v. Neven*, 38 Nev. 541; 148 P. 354; 154 P. 78; Ann. Cas. 1918B, 1083.

A party who is a material witness in his own behalf is not entitled to a continuance because of his absence, unless he shows that he had his testimony ready for use at the trial, but was prevented from attending the trial by some obstacle which, by the exercise of reasonable diligence, he could not overcome, and which he did not create by his own voluntary act. *Id.*

A party in two court proceedings in different places is bound by the first notice of trial, and the requirement of his presence at that trial affords a ground for a continuance of the other proceeding. *Id.*

See Criminal Law, 50, 51, 52, 53.

CONTRACT AND TORT

See Action, 5.

CONTRACTS**I. REQUISITES AND VALIDITY.****(B) Parties, Proposals and Acceptance.**

1. Qualified or conditional acceptance of offer.

(E) Validity of Assent.

2. Mistake.

(F) Legality of Object and of Consideration.

3. Restraint of trade or competition in trade.

II. CONSTRUCTION AND OPERATION.**(A) General Rules of Construction.**

4. Intention of parties.

IV. RESCISSION AND ABANDONMENT.

5. Acts constituting rescission.

V. PERFORMANCE OR BREACH.

6. Performance of conditions.
7. Approval or decision of others—Withholding approval.
8. Acts or omissions constituting breach.

I. REQUISITES AND VALIDITY**(B) PARTIES, PROPOSALS, AND ACCEPTANCE****1. Qualified or conditional acceptance of offer.**

Where the terms of a letter of proposal are accepted with certain qualifications, contract is not complete until terms imposed by letter of acceptance are agreed to. *McCone v. Eccles*, 42 Nev. 451; 181 P. 134.

(E) VALIDITY OF ASSENT**2. Mistake.**

The contract whereby plaintiff abandons public lands, on which she has located mining claims, in consideration of the payment to her by defendant of \$100 a month, till sale of 160 acres of the land, and agreement of defendant to make application for withdrawal, under the Carey Act (Act of Aug. 18, 1894, c. 301, 28 Stat. 372) of said lands and other lands, and to appropriate and develop them thereunder, the same to be sold, and a fifth of the proceeds of sale to be paid to plaintiff, is void as impossible of performance, and made under a mutual mistake; said act not allowing of sale of withdrawn land by the one withdrawing it, but only development of an irrigation system and sale of water therefrom to settlers, who make entry on the land and buy it from the state. *Miller v. Thompson*, 40 Nev. 35; 160 P. 775.

(F) LEGALITY OF OBJECT AND OF CONSIDERATION**3. Restraint of trade or competition in trade.**

An agreement between mine operators that they will not employ any person who belongs to a certain labor organization, or to any organization affiliating therewith, does not constitute an unlawful conspiracy against such organization or its members. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 501.

II. CONSTRUCTION AND OPERATION**(A) GENERAL RULES OF CONSTRUCTION****4. Intention of parties.**

When there is doubt as to the meaning of a contract, a party will be held to that meaning which he knew the other party supposed the words to bear during the performance of the contract. *Scully v. United States*, 197 F. 328.

IV. RESCISSION AND ABANDONMENT**5. Acts constituting rescission.**

A building contractor, on a dispute arising over a partial payment by the owner, notified the owner that he had "forfeited" the contract for failure to make the payment, and stated that the contractor might decide to cancel the contract. The contractor remained in charge of the work until completion. A large portion of the work had been subcontracted for before the dispute, but the subcontractors never released the contractor. The owner posted a notice on the building that he was not responsible for any debts made by the contractor, and declared that the contract was forfeited. The contractor posted a notice that the owner had defaulted in payments and that the building was being completed by subcontractors, who would not hold the property for their claims. Letters passing between the parties contained misstatements which did not relate to any material matter. The owner incurred expenses in the construction of the building by exercising rights under the contract and in settling with subcontractors. Held, that the contract was not rescinded, and the contractor could enforce his rights thereunder. *Schuler v. Golden*, 37 Nev. 281; 142 P. 221.

V. PERFORMANCE OR BREACH**6. Performance of conditions.**

A party who commits the first breach of a contract cannot maintain an action against the other for a subsequent failure to perform. *Bradley v. N. C. O.*, 42 Nev. 411; 178 P. 906.

7. Approval or decision of others—Withholding approval.

While the decision of an arbiter to whom the question of the performance of a contract is committed by its terms is binding on the parties, in the absence of fraud, mistake or negligence so great as to be equivalent to bad faith, it is not necessary that there should be actual fraud or intentional wrong to entitle the contractor to maintain an action to recover for his work, notwithstanding the refusal of the arbiter to approve the same, but it is enough if such refusal was arbitrary, unreasonable, or unjust. *Scully v. United States*, 197 F. 327.

8. Acts or omissions constituting breach.

Railroad, contracting for building specified length of fence on its right of way

within specified time, by notifying contractor to discontinue work, preventing continued performance of contract, and leading contractor to disband crew, breached the contract, notwithstanding its direction to contractor to resume work four months later. *Bradley v. N. C. O.*, 42 Nev. 411; 178 P. 906.

See Agency, 5, 8; Judgment, 15; Landlord and Tenant, 6; Mines and Minerals, 23; Specific Performance, 4; Vendor and Purchaser, 1.

CONTRACTS FOR PUBLIC WORK

See States, 3.

CONTRACTS OF JOINT ADVENTURE

See Limitation of Actions, 4.

CONTRACTS TO DELIVER STOCK

See Corporations, 1.

CONTRACTUAL RIGHTS

See Executors and Administrators, 6.

"CONTRIBUTED"

See Money Lent, 1.

CONTRIBUTORY NEGLIGENCE

See Master and Servant, 3, 12, 15, 16, 18, 19, 27; Negligence, 1, 5; Trial, 22.

CONTROL OF COMMUNITY ESTATE

See Husband and Wife, 4.

CONTROL OF COMMUNITY PROPERTY

See Homestead, 3.

CONTROL OF FUNDS BY LEGISLATURE

See Municipal Corporations, 1, 2.

CONTROL OF TESTIMONY BY PHYSICAL FACTS

See Evidence, 25.

CONTUMACIOUS REFUSAL TO ANSWER

See Depositions, 2.

CONVENTIONS

See Elections, 9.

CONVERSION

See Carriers, 2; Trover and Conversion, 2.

CONVERSION OF PROPERTY

See Carriers, 5.

CONVEYANCE

See Mines and Minerals, 21; Vendor and Purchaser, 7.

CONVEYANCE BY GUARDIAN

See Guardian and Ward, 1.

CONVEYANCE OF ALL INTEREST

See Replevin, 1.

CONVEYANCE OF RIGHT OF WAY

See Waters and Watercourses, 4.

CONVEYANCES

See Boundaries, 1; Estoppel, 2, 8; Fraudulent Conveyances, 1; Public Lands, 9.

CONVICTED JOINT PRINCIPAL

See Witnesses, 11.

CONVICTION

See Criminal Law, 18; Habeas Corpus, 10.

CONVICTS

1. Crimes.

1. Crimes.

Where accused was serving a life sentence in the state prison for murder, the district court had jurisdiction to order his production before it for trial on another murder charge. *State v. Tranmer*, 39 Nev. 142; 154 P. 80.

The statute guaranteeing a speedy trial does not apply while accused is in prison serving a sentence on another charge; but accused, serving such sentence, may demand that he be tried on all indictments against him, and a refusal to try him may enable him to invoke the statute. *Ex Parte Tranmer*, 35 Nev. 57; 126 P. 337; 41 L. R. A. (N.S.) 1005.

Under Rev. Laws, 6908, 6921, 7459, providing that every person shall be liable to punishment for a public offense committed by him, that there is no limitation of the time within which a prosecution for murder must be commenced, and that, when it is necessary to have one imprisoned brought before a court, an order for that purpose may be made, one sentenced to life imprisonment for murder may be tried pending his incarceration for a murder previously committed, and in the event of his conviction thereof, and sentence to death, the sentence may be carried into execution, notwithstanding section 7256.

providing that, where defendant has been convicted of two or more offenses before judgment on either, the judgment may be that the imprisonment on any one may commence at the expiration of the imprisonment on any other. *Ex Parte Tranmer*, 35 Nev. 56; 126 P. 337; 41 L. R. A. (N.S.) 1095.

See Criminal Law, 43.

CONVICTS' TESTIMONY

See Criminal Law, 64, 111.

CORAM NON JUDICE

See Justices of the Peace, 3.

CORPORATIONS

IV. CAPITAL, STOCK AND DIVIDENDS.

(D) *Transfer of Shares.*

1. Sales—Remedies.
2. Registration or transfer on corporate books—Liabilities and remedies for refusal.

VI. OFFICERS AND AGENTS.

(C) *Rights, Duties, and Liabilities as to Corporation.*

3. Compensation.

VII. CORPORATE POWERS AND LIABILITIES.

(B) *Representation by Officers and Agents.*

4. Application of principle of agency.
5. Actual or apparent authority.
6. Purchases, sales, and warranties.
7. Ratification and repudiation.
8. Undisclosed agency for corporation.
9. Evidence as to authority.

(D) *Contracts and Indebtedness.*

10. Mortgages and trust deeds—Forms, requisites, and validity.

(F) *Civil Action.*

11. Process and notice.

VIII. INSOLVENCY AND RECEIVERS.

12. Evidence of insolvency.

XII. FOREIGN CORPORATIONS.

13. Power to exclude, restrict, or regulate.
14. Expulsion, or withdrawal of permission to do business.
15. Right to sue or defend.
16. Actions by or against—Process.
17. Actions by or against—Attachment and garnishment.
18. Actions by or against—Judgment.

IV. CAPITAL, STOCK AND DIVIDENDS

(D) TRANSFER OF SHARES

1. Sales—Remedies.

In suit for breach of contract to convey 25,000 shares of capital stock of corporation to be organized to develop mining claims, made in consideration of plaintiff's trust deed of his interest or option in claims, evidence held insufficient to sustain verdict of \$300. *Richards v. Vermilyea*, 42 Nev. 294; 175 P. 188; 180 P. 121.

In action for breach of contract to deliver shares of capital stock of corporation to be organized, its value, if a proper criterion of damages, would be as of time of breach, and not as of date of contract. *Id.*

2. Registration or transfer on corporate books — Liabilities and remedies for refusal.

In an action against a corporation for conversion of stock by refusing to register its transfer on its books, evidence held to support a finding that the transfer was a bona-fide transaction. *Robinson M. Co. v. Riepe*, 37 Nev. 27; 138 P. 910.

VI. OFFICERS AND AGENTS

(C) RIGHTS, DUTIES, AND LIABILITIES AS TO CORPORATION

3. Compensation.

Where services rendered by plaintiff to a corporation of which he was a director or vice-president were within the scope of his official duties, he could not recover therefor without proof of an express contract of employment with an agreement for compensation, but as to services rendered outside the scope of his official duty he was entitled to recover on an implied promise if such promise could be inferred from the facts and circumstances in the case. *Dunlap v. Montana-Tonopah M. Co.*, 192 F. 714; *aff.* 196 F. 612.

An officer or director of a corporation may recover fair and reasonable compensation for services rendered for the corporation outside the scope of his official duties, although there was no express contract therefor, if the services were rendered under such circumstances as to raise the fair presumption that the parties intended and understood that they were to be paid for. *Montana-Tonopah M. Co. v. Dunlap*, 196 F. 612; 116 C. C. A. 286.

Evidence held to warrant a finding that emergency services rendered by a corporation's vice-president were without the scope of his official duties, and that he was entitled to recover compensation therefor, without an express contract to pay for them. *Dunlap v. Montana-Tonopah M. Co.*, 192 F. 715; *aff.* 196 F. 612.

VII. CORPORATE POWERS AND LIABILITIES

(B) REPRESENTATION BY OFFICERS AND AGENTS

4. Application of principle of agency.

One is an agent, whether he is acting for a natural person or corporation: the fact the principal is artificial not interfering with the status of the agent. *Bright v. Virginia and Gold Hill Water Co.*, 254 F. 175.

5. Actual or apparent authority.

Where an agent is clothed with a title implying general powers as vice-president, general manager, or superintendent of a corporation, the business public and courts

may fairly presume he is what the corporation holds him out as being. *Bradley v. N. C. O.*, 42 Nev. 411; 178 P. 906.

6. Purchases, sales, and warranties.

One employed to build in another state a standard-gage track in place of a narrow-gage one, and operate the road built, has authority to contract for the sale of narrow-gage ties removed from the track in the construction of the standard gage; he being the head officer in the state, charged with the management of the road. *Henningsen v. Tonopah and Goldfield Railroad Co.*, 33 Nev. 208; 111 P. 36; 119 P. 774; 29 Ann. Cas. 1008.

Where an agent of a corporation purchased goods for it, the fact that the corporation, after being served with summons in an action for the price, gave the agent property to reimburse him for the merchandise sold by the seller, and for advances made by the agent before and after the corporation was incorporated, did not defeat liability of the corporation to the seller. *Nesbitt v. Cherry Creek I. Co.*, 38 Nev. 150; 145 P. 929.

7. Ratification and repudiation.

A person was employed to build in a distant state a standard-gage track in place of a narrow-gage one, and to operate the road. The president of the company assented to his statement that the narrow-gage ties removed from the road ought to be sold. A form of contract for sale was drawn up by the attorney of the company, and then turned over to the auditor. Deliveries of ties under the contract were made for about six or seven months under the direction of the person in charge. The president was informed of the execution of the contract soon after it was made. The company's auditor, chief clerk, and assistant treasurer had knowledge of the contract and received payments for ties delivered under it. Held, that the company ratified the contract. *Henningsen v. Tonopah and Goldfield Railroad Co.*, 33 Nev. 208; 111 P. 36; 119 P. 774; 29 Ann. Cas. 1008.

The unauthorized act of the managing director of a company in granting a license became effectual when ratified by the company. *Sheehan v. Kasper*, 41 Nev. 27; 165 P. 632.

8. Undisclosed agency for corporation.

Where goods furnished by a seller were furnished for the use of a corporation after its incorporation, the corporation was equitably and legally liable, though the purchase for it was made by its undisclosed agent. *Nesbitt v. Cherry Creek I. Co.*, 38 Nev. 150; 145 P. 929.

9. Evidence as to authority.

In an action against a corporation upon a note, defended upon the ground that the person executing the note was not its president, either de jure or de facto, because not a stockholder, evidence held to sustain a finding that he was a stockholder and presi-

dent with authority to execute the note. *Darrowh v. Nevada M. Co.*, 37 Nev. 170; 140 P. 724.

(D) CONTRACTS AND INDEBTEDNESS

10. Mortgages and trust deeds — Forms, requisites, and validity.

A corporation which has received the benefit of all the money advanced by its mortgagee is not in a position to question the good faith and validity of the transaction. *Nev. Con. M. Co. v. Lewis*, 34 Nev. 500; 126 P. 105.

(F) CIVIL ACTION

11. Process and notice.

The method of service of process on corporations, prescribed by statute, must be one that with reasonable certainty will result in actual notice to the corporation. *King Tonopah M. Co. v. Lynch*, 232 F. 487.

VIII. INSOLVENCY AND RECEIVERS

12. Evidence of.

Evidence held insufficient to show that a company at the time of executing a mortgage was insolvent. *Nevada Con. M. Co. v. Lewis*, 34 Nev. 500; 126 P. 105.

XII. FOREIGN CORPORATIONS

13. Power to exclude, restrict, or regulate.

The legislature of a state has a right to exclude foreign corporations, providing the corporation is so organized that it has no authority to do anything but purely intrastate business. *King Tonopah M. Co. v. Lynch*, 232 F. 485.

14. Expulsion, or withdrawal of permission to do business.

A state legislature may prescribe the conditions on which a corporation may remain in and do business within the state, and for a violation of such conditions the privilege of doing business in the state may be revoked; but the corporation cannot, as punishment, be deprived of or compelled to waive a right guaranteed by the federal constitution. *Id.*

15. Right to sue or defend.

Where a Maryland fidelity and guaranty company has secured a license to do business in Nevada, its right to foreclose a mortgage, taken to indemnify it for loss incurred as surety on an appeal bond, will not be denied because such corporation has failed to pay a gross-earnings tax imposed on foreign insurance companies doing business in Maryland, and which tax might be enforced in Nevada under general corporation law (Stats. 1903, c. 88), sec. 106, providing that foreign corporations doing business in the state shall suffer such penalties and taxes as may be imposed by the laws of the foreign state on corporations of Nevada; the Maryland statutes containing no provision that the failure to pay the tax shall result in any forfeiture of the corporation's property rights, the only penalty imposed being a fine. *U. S. F. & G. Co. v. Marks*, 37 Nev. 306; 142 P. 524.

Comp. Laws, 3124, provides that service of process against a foreign corporation doing business within the state, may be made on an agent, cashier, secretary, president, or other head thereof. Section 899 provides that every foreign corporation doing business in the state shall appoint an agent upon whom all legal process may also be served. In an action to enforce a mechanic's lien against a foreign corporation, service was made on its manager who had not been appointed its agent therefor. Held, that such service was valid under section 3124, which was in force at the passage of section 899, since the manager of a corporation is such an agent or "other head" of a company as is contemplated by the statute: an "agent" being one who has authority to act for another. *Daly v. Lanthorn Mines Co.*, 39 Nev. 14; 151 P. 514; 158 P. 285.

16. Actions by or against—Process.

A constructive agreement by a corporation doing business in a state to submit to a void or illegal statute prescribing a mode of serving process, which denies due process of law, cannot be founded on anything less than actual knowledge of the statute, as the presumption that every man knows the law does not hold him to a knowledge of statutes which for any reason are illegal or void. *King Tonopah M. Co. v. Lynch*, 232 F. 485.

17. Actions by or against—Attachment and garnishment.

Where the property attached in an action against a nonresident foreign corporation was a patented mining claim, which was not being worked and had not been worked or occupied for years, and on which annual labor was neither performed nor required, and the only visible evidence of the seizure was notice to that effect posted on the claim, such seizure did not obviate the necessity of notice to the owner, and a valid judgment, which might be enforced against the mining claims, could not be obtained unless the company was served as prescribed by law and the service must have amounted to due process. *King Tonopah M. Co. v. Lynch*, 232 F. 486.

18. Actions by or against—Judgment.

Where, in an action against a nonresident foreign corporation, a writ of attachment was issued and levied when the action was commenced, the property so sequestered limited the extent to which a judgment obtained by constructive service could be enforced. *King Tonopah M. Co. v. Lynch*, 232 F. 485.

See Judgment, 7; Municipal Corporations, 7; Sales 4, 5, 8, 13; Trover and Conversion, 2.

CORRECTING ERRORS

See Prohibition, 8.

CORROBORATION

See Criminal Law, 16.

COSTS

I. NATURE AND GROUNDS AND EXTENT OF RIGHT.

1. Dependent on statute.
2. Apportionment.

V. AMOUNT, RATE AND ITEMS.

3. Witnesses' fees.
4. Mileage.

VI. TAXATION.

5. Bill of costs—Service.
6. Duties and proceedings of taxing officer.
7. Remedies for erroneous taxation.
8. Remedies for erroneous taxation—Motion for retaxation.
9. Waiver and correction of irregularities and errors.

VII. ON APPEAL OR ERROR, AND ON NEW TRIAL OR MOTION THEREFOR.

10. Review of decisions of justices of the peace.
11. Prevailing or successful party.
12. Persons liable.
13. Award or certificate of costs on determination on appeal or writ of error.
14. Disbursements.
15. Expenses of record, abstract, or transcript on appeal or error.
16. Damages and penalties for frivolous appeal and delay—Right and grounds.
17. Taxation of costs on appeal and error.

I. NATURE AND GROUNDS AND EXTENT OF RIGHT

1. Dependent on statute.

Costs are recoverable only by express statutory provisions. *State v. Baker and Josephs*, 35 Nev. 300; 126 P. 345; 129 P. 452.

2. Apportionment.

In a suit by a former wife to obtain her share in property which had composed the community estate of herself and her former husband, the costs of receivership proceedings will not be assessed wholly against the husband's interest, though the wife prevailed, where the equities were not all in her favor. *Johnson v. Garner*, 233 F. 758.

V. AMOUNT, RATE, AND ITEMS

3. Witnesses' fees.

Witness fees may only be taxed when expressly allowed by legislative enactment. *Zelavin v. Tonopah Belmont*, 39 Nev. 2; 149 P. 188.

Although a party is not entitled to tax mileage on account of witnesses attending court out of the county, he may nevertheless

less recover their per diem for the days they were upon the witness stand. *Id.*

4. Mileage.

Under Rev. Laws, 5431, providing that no person shall be required to attend as a witness out of the county in which he resides, unless the distance be less than thirty miles from his residence, the mileage of witnesses residing in another county more than thirty miles from the place of trial cannot be taxed as costs. *Id.*

Where it does not appear on a motion to retax costs that witnesses from a foreign state were not served at the state line, their mileage may be recovered from such line. *Zelavin v. Tonopah Belmont Co.*, 39 Nev. 3; 149 P. 188.

VI. TAXATION

5. Bill of costs—Service.

Where plaintiff's bill of costs was filed, but no copy thereof was filed in the county clerk's office, there was no service on defendant's attorneys under Rev. Laws, 5369, providing that where the party on whom the service is to be made does not reside at the county-seat, the service may be made by filing the papers to be served in the county clerk's office, even if that section applies, since under section 5387, requiring the party claiming costs to deliver a memorandum of the items of his costs to the clerk and serve a copy upon the adverse party, the paper required to be served was a copy of the cost bill. *Radovich v. W. U. Tel. Co.*, 36 Nev. 341; 135 P. 920; 136 P. 704.

Under Rev. Laws, 5387, providing that the party prevailing must deliver to the clerk a memorandum of the items of his costs, and serve a copy upon the adverse party, and section 5375 providing that where a party has an attorney the service of papers shall be upon the attorney, with certain exceptions, service of a cost bill should be made upon the attorneys for the adverse party, since their authority is not terminated so long as the amount of costs remains open to settlement, and service of the cost bill upon the resident agent of a foreign corporation was irregular, if not void, since under section 5024, requiring foreign corporations to keep in the state an agent upon whom all legal process may be served, only papers in the nature of process may be served upon the resident agent, and under section 5475, providing that, unless otherwise apparent from the context, the word "process" means a writ or summons issued in the course of judicial proceedings, the cost bill is not a process. *Id.*

The court has jurisdiction to strike from the files a cost bill not filed within the time allowed by law. *Id.*

6. Duties and proceedings of taxing officer.

Under Rev. Laws, 5387, requiring the clerk to tax his fees, such fees should be

taxed in favor of a prevailing plaintiff, although the bill of costs was properly stricken. *Glock v. Elges*, 39 Nev. 415; 150 P. 629.

7. Remedies for erroneous taxation.

Under rule 34, providing that the party against whom judgment is entered shall have two days after service of a copy of the cost bill in which to move to retax costs, a notice of motion to retax, filed and served within two days after service of the cost bill, was sufficient, without actually filing and making in court within that time a motion to retax. *Lind v. Webber*, 30 Nev. 624; 134 P. 461; 135 P. 139; 141 P. 458; 50 L. R. A. (N.S.) 1046.

Under rule 34, providing that the party against whom judgment is entered shall have two days after service of a copy of the cost bill in which to move to retax, if defendant felt aggrieved because a hearing for a motion to retax was noticed for the second Saturday instead of the first thereafter, he should have applied to the lower court to shorten the time. *Id.*

8. Remedies for erroneous taxation—Motion for retaxation.

Where plaintiffs filed and served a notice of motion to retax costs two days after the entry of judgment, it was error to sustain an objection to the hearing of the motion, because no "motion" had been filed within two days after the entry of judgment. *Id.*

Where a cost bill has been filed in time, and thereafter a motion to retax is made without reservation of any question of service, a subsequent order to strike because of defective service is an excess of jurisdiction. *Radovich v. W. U. Tel. Co.*, 36 Nev. 341; 135 P. 920; 136 P. 704.

A party who did not serve a copy of his cost bill on the attorneys for the adverse party, as required by law, could not attack a motion to retax the costs as not having been filed in time. *Id.*

9. Waiver and correction of irregularities and errors.

The party entitled to assert a waiver upon the part of the adverse party may himself waive such waiver. *Id.*

Where a cost bill is filed in time, the filing of a motion to retax, without reservation, is a waiver of any question of the regularity of service. *Id.*

Plaintiff's failure to serve a copy of his cost bill upon the defendant's attorneys was waived, where they moved to retax the costs, without questioning the service or reserving the right to so question it. *Id.*

VII. ON APPEAL OR ERROR, AND ON NEW TRIAL OR MOTION THEREFOR

10. Review of decisions of justices of the peace.

Where a case comes to the district court on appeal from justice's court, costs in

the district court do not follow as of course, but come under the provisions of Rev. Laws, 5380, whereby the district court is authorized and directed to exercise its discretion in cases other than those mentioned in section 5377, prescribing allowance of costs as of course. *McLeod v. District Court*, 39 Nev. 337; 157 P. 649.

11. Prevailing or successful party.

In view of Rev. Laws, 5333, providing that when appellant specifies as ground for appeal that the judge erred in denying a motion for new trial on ground that the evidence did not support the judgment and does not prevail, he shall not recover costs for the statement of the testimony, although he prevails on other alleged errors on an appeal from the judgment and from an order denying a motion for a new trial, where the only relief granted appellant was on the appeal from the judgment based on the judgment roll alone, appellant is not entitled to costs for the transcript on appeal from the order denying his motion for a new trial. *Ramelli v. Sorgi*, 40 Nev. 281; 161 P. 717.

12. Persons liable.

Where costs are incurred on both sides on appeal or original proceeding, the clerk must collect his costs in advance from the respective parties incurring them. *State v. Baker and Josephs*, 35 Nev. 301; 126 P. 345; 129 P. 452.

Each party to an appeal or proceeding in the supreme court is primarily liable for the costs made by him, and there is no statutory authority for the charging to relator or appellant, or requiring the payment by them before judgment, of fees incurred by respondent. *Id.*

13. Award or certificate of costs on determination on appeal or writ of error.

Under the provisions of Rev. Laws, 5381, where the supreme court in reversing a judgment makes no order as to costs, the costs shall be allowed to the party obtaining relief, and where a judgment for plaintiff for \$300 was reversed, it follows as a matter of course that costs are recoverable by appellant without an order therefor. *Richards v. Vermilyea*, 42 Nev. 294; 175 P. 188; 180 P. 121.

14. Disbursements.

Items for cash paid a surety company by appellant as premiums on the appeal and stay bond are proper elements of cost to be collected by appellant upon reversal, in view of Rev. Laws, 699. *Id.*

15. Expenses of record, abstract, or transcript on appeal or error.

In computing the costs under supreme court rule 6, fixing the amount to be allowed per folio for a typewritten copy of the transcript, it was error for the clerk to include in his calculation the original papers on file and included in the record. *Id.*

16. Damages and penalties for frivolous appeal and delay—Right and grounds.

Appealing for delay. *Paroni v. Simonsen*, 34 Nev. 26; 115 P. 415.

Under Rev. Laws, 5381, where, in opinion on rehearing, the supreme court made no order as to costs, since defendant appellant had obtained relief originally by reduction of judgment against it, judgment having been reversed unless plaintiff agreed to reduction, appellant should recover its costs on original appeal. *Dixon v. Southern Pacific Co.*, 42 Nev. 74; 172 P. 368; 177 P. 14.

Where both parties petitioned for rehearing, and neither obtained any relief as a consequence, each party, under Rev. Laws, 5381, should pay his own costs incurred on rehearing. *Id.*

Damages for appealing for delay, authorized by Comp. Laws, 3434, are properly assessed on dismissal for failure to appeal in time, where appellant waited until what he supposed to be the last day for appeal, brought no record up, and did not resist the motion to dismiss. *Paroni v. Simonsen*, 34 Nev. 26; 115 P. 415.

17. Taxation of costs on appeal or error.

Until the discretion of the district court on appeal from justice's court was exercised in fixing costs, there was nothing in the statutes or procedure preventing the party against whom the costs might be assessed from appearing to object to the whole cost bill, or any items therein. *McLeod v. District Court*, 39 Nev. 337; 157 P. 649.

A cost bill, though not filed until after decision on rehearing, was filed in time. *Ramelli v. Sorgi*, 40 Nev. 281; 161 P. 717.

Under Sup. Ct. Rule 6, par. 2, providing that a party, desiring to recover as costs his printing expenses, shall within five days after the decision of the cause file with the clerk and serve on the opposite party a cost bill, stating the actual cost of the printing, service thereof on the opposite party within such time is as necessary as its filing with the clerk. *Zelavin v. Tonopah Belmont Co.*, 41 Nev. 1; 149 P. 188; 161 P. 736.

Sup. Ct. Rule 6, par. 2, making the filing and service of cost bill within five days after decision of cause a condition to recovery of printing expenses as costs, not being for the convenience of the court or tending to facilitate its business, its enforcement is not subject to its discretion. *Id.*

Under rule 6, paragraph 3, rules of supreme court, objections to cost bill must be filed with the clerk of the court and heard and settled by such clerk. From the ruling of the clerk an appeal may be taken to the court. The court will not consider objections to a cost bill except upon appeal from the decision of the clerk. In *Re Hartung's Estate*, 39 Nev. 200; 155 P. 353.

See Eminent Domain, 16.

COUNSEL

See Criminal Law, 51; New Trial, 1.

COUNTERCLAIM

See Executors and Administrators, 10.

COUNTIES**I. CREATION, ALTERATION, EXISTENCE, AND POLITICAL FUNCTIONS.**

1. Territorial extent and boundaries—Establishment of boundaries.

II. GOVERNMENT AND OFFICERS.**(A) Organization and Powers of Government.**

2. Legislative control of acts, rights, and liabilities.

(C) County Board.

3. Removal.
4. Powers and functions.

(D) Officers and Agents.

5. Removal.
6. Accounting for public funds or other property.

IV. FISCAL MANAGEMENT, PUBLIC DEBTS, SECURITIES, AND TAXATION.

7. Borrowing money.
8. Bills and notes.

V. CLAIMS AGAINST COUNTY.

9. Effect of allowance or disallowance.

VI. ACTIONS.

10. Conditions precedent—Presentation of claim.

I. CREATION, ALTERATION, EXISTENCE, AND POLITICAL FUNCTIONS**1. Territorial extent and boundaries—Establishment of boundaries.**

Stats. 1866, c. 47, sec. 1, which authorized the survey and establishment of boundaries between the several counties, and required the survey to be commenced within six months after the passage of the act, was directory, especially in view of section 7, permitting such surveys to be made when a county line is now or may "hereafter" be in dispute. *Lyon County v. Storey County*, 34 Nev. 243; 117 P. 827.

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II. GOVERNMENT AND OFFICERS**(A) ORGANIZATION AND POWERS OF GOVERNMENT****2. Legislative control of acts, rights, and liabilities.**

The legislature has complete control of the entire subject of counties and county-seats, except where prohibited by constitu-

tional provisions. *Quilici v. Strosnider*, 34 Nev. 9; 115 P. 177.

(C) COUNTY BOARD**3. Removal.**

Complaint on behalf of state for benefit of a county, stating that the complainant is a citizen, resident and taxpayer of the county, and is foreman of the grand jury and at the request of the grand jury petitions for removal of county commissioner, was a proper petition under Rev. Laws, 2851, et seq., providing for removal, and not under section 6894, et seq., providing for removal after jury trial, since the allegations as to action on the grand jury's request were surplusage; the complaint being sufficient without them. *Ex Parte Jones and Gregory*, 41 Nev. 523; 173 P. 885.

4. Powers and functions.

Whether boards of county commissioners may exercise powers not expressly granted, but which may be implied from the language of a statute, discussed, but not determined. *Heywood v. Nye County*, 36 Nev. 568; 137 P. 515.

(D) OFFICERS AND AGENTS**5. Removal.**

Whether or not Const. art. 6, sec. 6, gives the district court jurisdiction of proceedings for removal of county officers, article 7, section 4, gives the legislature plenary power to provide procedure therefor, and therefore Stats. 1908-09, c. 200, secs. 21, 22 (Rev. Laws, 2851, 2852), giving such jurisdiction, is constitutional. *Gay v. District Court*, 41 Nev. 330; 171 P. 156.

6. Accounting for public funds or other property.

Where a county auditor was his own successor in office, he was bound to make the joint report required by Rev. Laws, 3746, requiring the county auditor and county treasurer to make a joint statement to the board of county commissioners, showing the amount of collections, etc., though such report should have been made during the preceding term, since the duty was a continuing one. *State v. Kirman*, 17 Nev. 390, distinguished. *State v. Bonfield*, 37 Nev. 44; 138 P. 906.

IV. FISCAL MANAGEMENT, PUBLIC DEBTS, SECURITIES, AND TAXATION**7. Borrowing money.**

A county having had the benefit of money obtained by county commissioners on a temporary loan under the act of March 13, 1903 (Stats. 1903, c. 78), sec. 6, is estopped to assert that there did not exist a case of great necessity or emergency authorizing the commissioners making the loan. *First Nat. Bank v. Nye Co.*, 38 Nev. 124; 145 P. 932; Ann. Cas. 1917C, 1195.

8. Bills and notes.

County commissioners cannot issue negotiable notes unless power is given expressly or by clear implication. *First Nat.*

Bank v. Nye County, 38 Nev. 123; 145 P. 932; Ann. Cas. 1917C, 1195.

Under the act of March 13, 1903 (Stats. 1903, c. 78), secs. 6, 7 (Rev. Laws, 3831, 3832) authorizing county commissioners, in case of great necessity or emergency, to make a temporary loan, and requiring them at the next tax levy to levy an extra tax to pay it, no power to execute a negotiable note to secure the payment can be implied. First Nat. Bank v. Nye County, 38 Nev. 124; 145 P. 932; Ann. Cas. 1917C, 1195.

Giving negotiable notes for temporary loans made by county commissioners in case of great necessity or emergency, to be paid for from the next tax levy, under authority of the act of March 13, 1903 (Stats. 1903, c. 78), secs. 6, 7 (Rev. Laws, 3831, 3832), is not within the act of March 8, 1865 (Stats. 1864-65, c. 80), sec. 8, subd. 13, empowering county commissioners to do things "strictly necessary" to the full discharge of their powers. *Id.*

County commissioners having no power to issue negotiable notes, notes issued by them will be regarded as non-negotiable. *Id.*

V. CLAIMS AGAINST COUNTY

9. Effect of allowance or disallowance.

Under Rev. Laws, 1523, prohibiting actions on a demand against a county, unless first presented to the county commissioners and county auditor for allowance, and providing that where they fail to allow the same, or some part thereof, the claimant may sue, and sections 1535 and 1541, providing that demands against a county must be presented in the form of bills, one having several liquidated claims may put them in one bill, and where specified demands are allowed and others rejected the claimant may accept the amount allowed and sue for the claims disallowed in whole or in part; and a constable presenting monthly bills made up of various items for services rendered, for which the statute prescribes fees, may accept the part allowed and sue for the part disallowed, though in the case of an unliquidated demand the allowance of a part requires claimant to accept the part as satisfaction for the claim, or sue for the entire demand. Wolf v. Humboldt County, 36 Nev. 26; 131 P. 964; 45 L. R. A. (N.S.) 762.

VI. ACTIONS

10. Conditions precedent—Presentation of claim.

The orders of county commissioners authorizing issuance of notes, and their subsequent issuance thereof, constitute them approved liquidated demands against the county, which therefore need not be presented to the board for allowance before action thereon, and this though they be not negotiable. First Nat. Bank v. Nye Co., 38 Nev. 124; 145 P. 932; Ann. Cas. 1917C, 1195.

See Boundaries, 1.

COUNTY AUDITOR

See Counties, 6; Mandamus, 17.

COUNTY BONDS

See Schools and School Districts, 3.

COUNTY COMMISSIONERS

See Elections, 17; Licenses, 1, 2; Prohibition, 5.

COUNTY OFFICERS

See Prohibition, 5; Statutes, 16.

COUNTY-SEAT

See Counties, 2.

COURSES AND DISTANCES

See Boundaries, 1.

COURT COMMISSIONER

See Elections, 21.

COURTS

I. NATURE, EXTENT, AND EXERCISE OF JURISDICTION.

1. Nature and source of authority—Local or transitory actions.
2. Nature and source of authority—Actions under laws of other state.
3. Presumptions as to jurisdiction.
4. Waiver of objections.
5. Determination of questions of jurisdiction.

II. ESTABLISHMENT, ORGANIZATION, AND PROCEDURE.

- (C) *Rules of Court and Conduct of Business.*
6. Operation and effect of rules.

III. COURTS OF GENERAL ORIGINAL JURISDICTION.

- (A) *Grounds of Jurisdiction.*
7. Amount in controversy.

IV. COURTS OF LIMITED OR INFERIOR JURISDICTION.

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9. Municipal court—Procedure.

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- (A) *Jurisdiction and Powers.*
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15. Matter in dispute and amount or value claimed or involved.

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16. Conformity to state practice—Exclusion of equity causes.
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(G) *Supreme Court.*

20. Time and manner of raising federal question in state court.
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VIII. CONCURRENT AND CONFLICTING JURISDICTION AND COMITY.

(A) *Courts of Same State, and Transfer of Causes.*

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25. Property in custody of the law—Administration of decedents' estates.

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1. *Nature and source of authority—Local or transitory actions.*

An action for personal injuries is transitory, and may be maintained in the state in which service can be obtained on the defendant, though the injuries were caused in another state. *Keane Wonder M. Co. v. Cunningham*, 222 F. 821; 138 C. C. A. 247.

2. *Nature and source of authority—Actions under laws of other state.*

Where the statutes of the state in which a transitory cause of action arose are not in the substance inconsistent with the statutes or the public policy of the state in which the action is brought, they will be recognized and applied, and to be contrary to the "public policy" of the state the foreign statutes must be against good morals or natural justice, or such that the enforcement of it would be prejudicial to the general interests of the citizens, it not being sufficient that it differs from the law of the state. *Id.*

3. *Presumptions as to jurisdiction.*

It is a primal duty of all courts to keep strictly within their jurisdiction. In every affirmative action taken by a court, there is an implied adjudication of jurisdiction. *Gamble v. Silver Peak*, 39 Nev. 319; 133 P. 936.

A court should always take note of a suggestion of want of jurisdiction, notwithstanding the rule as to waiver or estoppel, where rights of third parties may be involved and may raise the question of its own motion. *Id.*

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It is a general rule that a jurisdictional question may be raised at any time. However, a party, by his conduct, may become estopped to raise such a question. Where a party has treated a judgment as final throughout the proceedings, applied for and obtained relief upon the assumption that such judgment was final, and upon appeal prayed for its affirmance or reversal, he will not thereafter be heard to question its finality. *Id.*

Whether a judgment is final or is only interlocutory is a question of law. *Id.*

Where complainant, in a suit for divorce, averred under oath that he had resided within the county long enough to give the court jurisdiction, after judgment for defendant he could not have an order setting it aside without prejudice on the ground that he had not in fact been a resident of the county for the jurisdictional period; he having waived objection to jurisdiction of his person. *Grant v. Grant*, 38 Nev. 185; 147 P. 451.

5. *Determination of questions of jurisdiction.*

As the constitution authorizes the issuance of writs of mandamus regardless of the value involved, and the bonds tendered with their coupons are of the face value of over \$400,000, and the respondent introduced no proof to support the allegations in his answer that the bonds are of no value, their value, which depends upon the result of a suit, need not be proven in advance by the petitioner in order to entitle him to a writ of mandate requiring their acceptance preliminary to suit to determine their validity, and which would also establish their value, as with other negotiable instruments their value is presumed. *State ex rel. White v. Dickerson*, 33 Nev. 540; 113 P. 105.

II. ESTABLISHMENT, ORGANIZATION, AND PROCEDURE

(C) *RULES OF COURT AND CONDUCT OF BUSINESS*6. *Operation and effect of rules.*

The rules of the district court have the force and effect of statutory provisions and must be followed. *Beco v. Tonopah Ext. M. Co.*, 37 Nev. 199; 141 P. 453.

III. COURTS OF GENERAL ORIGINAL JURISDICTION

(A) *GROUND'S OF JURISDICTION*7. *Amount in controversy.*

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See *Prohibition*, 5; *Statutes*, 16.

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See *Counties*, 2.

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COURTS

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VIII. CONCURRENT AND CONFLICTING JURISDICTION AND COMITY

(A) COURTS OF SAME STATE, AND TRANSFER OF CAUSES

22. Grounds.

In such case, where defendant challenged the legality of the tax or questioned the constitutionality of the ordinance in the municipal court, that court was ousted of jurisdiction and should have certified the pleading to the district court. In *Re Dixon*, 40 Nev. 228; 161 P. 737.

(B) STATE COURTS AND UNITED STATES COURTS

23. Exclusive or concurrent jurisdiction.

One contracting with a railroad company for a special train to run from a point in the state to a point in a sister state and return may sue the company in a state court for a breach of the contract, without previous application to the interstate commerce commission. *Burrus v. N. C. O. Ry. Co.*, 38 Nev. 156; 145 P. 926; *L. R. A.* 1917D, 750.

The judicial power, authority, and duty of the United States district court is wholly independent of state action and cannot directly or indirectly be destroyed, abridged, limited or rendered less efficacious by any state statute or by any state authority whatever, so that *Rev. Laws*, Nev. 5972, 5974, 5975, could not confer on the district courts of the state a practically exclusive jurisdiction over the property of a deceased party defendant in possession of the United States district court by its receiver and in course of distribution to judgment and other creditors. *Johnson v. Johnson*, 225 F. 414.

The powers exercised by the English court of chancery in probate matters, on the theory that the administrator of an estate was charged with the administration of a trust, prevailing at the adoption of the federal constitution and the passage of the judiciary act, were vested in the United States circuit court, so that such court has general equity jurisdiction to administer, as between citizens of different states, the assets of a deceased party to a suit within its jurisdiction. *Id.*

24. Pendency and scope of prior proceeding.

After an order of the federal court restraining disposition of property of the defendant was served on a bank holding defendant's property, the bank cannot, by attachment in the state courts, acquire any lien. *Johnson v. Garner*, 233 F. 759.

25. Property in custody of the law—Administration of decedents' estates.

The United States district court would not attempt to execute its judgment in favor of plaintiff, if the property of defendant's estate was in the possession and custody of an administrator appointed by the state court, since the federal court, upon reasons of necessity and comity, cannot seize and control property while it is in the custody of a state court. *Johnson v. Johnson*, 225 F. 414.

See Appeal and Error, 3; Constitutional Law, 25; Evidence, 4.

COURTS OF RECORD

See Justices of the Peace, 1.

COVERTURE

See Husband and Wife, 4.

CREDIBILITY OF WITNESSES

See Criminal Law, 15.

"CREDITOR"

See Fraudulent Conveyances, 2.

CREST OF VEIN

See Mines and Minerals, 13.

CRIME AGAINST NATURE

See Sodomy, 1, 2.

CRIMINAL CASES ON APPEAL TO SUPREME COURT

See Criminal Law, 89.

CRIMINAL CONVERSATION

See Husband and Wife, 10, 11, 12.

CRIMINAL LAW

I. NATURE AND ELEMENTS OF CRIME AND DEFENSES.

1. Power to define and punish crime—States.
2. Attempts.

III. PARTIES TO OFFENSES.

3. Principals, aiders, abettors, and accomplices.
4. Accessory after fact—Assistance.

IV. JURISDICTION.

5. Constitutional and statutory provisions.

V. VENUE.

(A) Place of Bringing Prosecution.

6. Locality of offense.

(B) Change of Venue.

7. Discretion of court.
8. Grounds for change—Local prejudice.

hear and determine the subject-matter in controversy in the suit before the court, including the power to issue proper process to enforce such judgment or decree. *Id.*

(B) JURISDICTION DEPENDENT ON NATURE OF SUBJECT-MATTER

13. Actions by or against United States officers.

Under Const. art. 2, sec. 2, providing for the appointment of officers by the president or heads of departments, a deputy United States surveyor, appointment of whom by a surveyor-general is provided for by Rev. St. sec. 2223 (U. S. Comp. St. 1901, p. 1362), is not an "officer of the United States," within act of March 3, 1887, c. 359, sec. 2, 24 Stat. 505, as amended by act of June 27, 1898, c. 503, 30 Stat. 495 (U. S. Comp. St. 1901, p. 753), withdrawing from the jurisdiction of the circuit and district courts suits for fees, salary, or compensation for official services of officers of the United States. *Scully v. United States*, 193 F. 185.

(C) JURISDICTION DEPENDENT ON CITIZENSHIP, RESIDENCE, OR CHARACTER OF PARTIES

14. Suits against states.

Despite the constitutional amendment depriving the federal courts of jurisdiction of a suit against a state by a private individual, the federal courts may take jurisdiction of a suit to enjoin state or county officers from illegal exactions under color of state tax statutes. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 317.

(D) JURISDICTION DEPENDENT ON AMOUNT OR VALUE IN CONTROVERSY

15. Matter in dispute and amount or value claimed or involved.

The federal district court has jurisdiction of a suit involving \$3,000 or more, where the parties are citizens of different states. *Id.*

(E) PROCEDURE, AND ADOPTION OF PRACTICE OF STATE COURTS

16. Conformity to state practice—Exclusion of equity causes.

An adequate remedy at law, which can be administered only in a state court, is not sufficient to compel a federal court to dismiss an equitable cause over which its jurisdiction is otherwise valid and complete, and relegate the complainant for his only alternative relief to a state court. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 319.

17. Pleading.

Amendment of pleadings in federal courts is governed by Rev. St. sec. 954 (U. S. Comp. St. 1901, p. 696), and not by the laws of the state under Conformity Act (Rev. St. sec. 914 [U. S. Comp. St. 1901, p. 694]). *T. R. G. E. Co. v. Benner*, 211 F. 79; 127 C. C. A. 503.

(F) STATE LAWS AS RULES OF DECISION

18. Authority of state statutes, constitutions and ordinances.

It is within the power of the state to determine the order in which debts of an estate shall be paid; therefore the federal courts must give effect to Rev. Laws, Nev. 6052, declaring priorities. *Johnson v. Garner*, 233 F. 758.

19. Authority of state decision—Construction of state statute.

The federal courts follow the decisions of the highest courts of the states in construing the constitution and laws of the state, unless they conflict with the United States constitution or laws. *Forrester v. S. P. Co.*, 36 Nev. 248; 134 P. 753; 48 L. R. A. (N.S.) 1.

Where, in an action for wrongful death under a state statute, the court limited plaintiff's recovery, if any, to the actual pecuniary loss or damage which the beneficiaries had sustained from decedent's death, and the instructions conformed to the construction which had been placed on the statute by the highest court of the state, it was not material that the individual view of the trial court as to the construction of the statute did not coincide with that submitted. *T. R. G. E. Co. v. Benner*, 211 F. 79; 127 C. C. A. 503.

If the question of the validity of a state statute involves merely its conformity to the state constitution, the decisions of the highest court of the state are final and conclusive, and a federal court is reluctant to declare a state statute invalid on that ground before the question has been considered and determined by the state tribunal. *Bergman v. Kearney*, 241 F. 885.

In so far as ruling of state court, that the state is not concluded by assessor's entry as to whether tax was on property or privilege, turns on the authority of the state board and the assessor under the state statute, and the relative effect to be given their acts, it is not reviewable by the national court. *Wells Fargo & Co. v. State of Nevada*, 39 S. C. R. 62.

(G) SUPREME COURT

20. Time and manner of raising federal question in state court.

To suggest or set up a federal question for the first time in a petition for rehearing in the highest court of the state is not in time. *Wren v. Dixon*, 40 Nev. 173; 161 P. 722; 167 P. 324; *Ann. Cas.* 1918D, 1064.

21. Writ of error and proceedings thereon.

In an action to quiet title to a mining claim and mill site claimed under a United States patent duly recorded, where the agreed statement of facts asserted defendant's adverse possession under a certificate of tax sale, and precluded the idea of plaintiff's possession, the court's assertion that

plaintiff had never taken possession was within the record, especially where the judgment for defendant did not turn upon such assertion, and a petition for a writ of error to the United States Supreme Court on the ground that the court's opinion raised a federal question would be denied. *Id.*

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One contracting with a railroad company for a special train to run from a point in the state to a point in a sister state and return may sue the company in a state court for a breach of the contract, without previous application to the interstate commerce commission. *Burrus v. N. C. O. Ry. Co.*, 38 Nev. 156; 145 P. 926; *L. R. A.* 1917D, 750.

The judicial power, authority, and duty of the United States district court is wholly independent of state action and cannot directly or indirectly be destroyed, abridged, limited or rendered less efficacious by any state statute or by any state authority whatever, so that *Rev. Laws*, Nev. 5972, 5974, 5975, could not confer on the district courts of the state a practically exclusive jurisdiction over the property of a deceased party defendant in possession of the United States district court by its receiver and in course of distribution to judgment and other creditors. *Johnson v. Johnson*, 225 F. 414.

The powers exercised by the English court of chancery in probate matters, on the theory that the administrator of an estate was charged with the administration of a trust, prevailing at the adoption of the federal constitution and the passage of the judiciary act, were vested in the United States circuit court, so that such court has general equity jurisdiction to administer, as between citizens of different states, the assets of a deceased party to a suit within its jurisdiction. *Id.*

24. Pendency and scope of prior proceeding.

After an order of the federal court restraining disposition of property of the defendant was served on a bank holding defendant's property, the bank cannot, by attachment in the state courts, acquire any lien. *Johnson v. Garner*, 233 F. 759.

25. Property in custody of the law—Administration of decedents' estates.

The United States district court would not attempt to execute its judgment in favor of plaintiff, if the property of defendant's estate was in the possession and custody of an administrator appointed by the state court, since the federal court, upon reasons of necessity and comity, cannot seize and control property while it is in the custody of a state court. *Johnson v. Johnson*, 225 F. 414.

See Appeal and Error, 3; Constitutional Law, 25; Evidence, 4.

COURTS OF RECORD

See Justices of the Peace, 1.

COVERTURE

See Husband and Wife, 4.

CREDIBILITY OF WITNESSES

See Criminal Law, 15.

"CREDITOR"

See Fraudulent Conveyances, 2.

CREST OF VEIN

See Mines and Minerals, 13.

CRIME AGAINST NATURE

See Sodomy, 1, 2.

CRIMINAL CASES ON APPEAL TO SUPREME COURT

See Criminal Law, 89.

CRIMINAL CONVERSATION

See Husband and Wife, 10, 11, 12.

CRIMINAL LAW

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I. NATURE AND ELEMENTS OF CRIME AND DEFENSES

1. Power to define and punish crime—States.

The legislature may regulate the banking business, and the penal statutes safeguarding the business of banking are applicable to banks organized previous to, as well as to banks organized after, their passage. *Eureka Bank Cases*, 35 Nev. 80; 126 P. 655; 129 P. 308.

Acting within constitutional bounds, the legislature is clothed with unlimited and absolute power to define statutory offenses and prescribe punishment for their violation, and may penalize acts which before were innocent. *State v. Park*, 42 Nev. 386; 178 P. 389; 3 Am. Law Rep. 75.

The legislature may, in the exercise of the police power when public interests demand it, define and declare public offenses the effect of which restricts or regulates the use and enjoyment of private property. *Id.*

2. Attempts.

An act done with intent to commit a crime, and tending, but failing, to accomplish it, is an attempt to commit that crime (citing 1 Words and Phrases, Attempt to Commit Crime). *State v. Huber*, 38 Nev. 253; 148 P. 562.

III. PARTIES TO OFFENSES

3. Principals, aiders, abettors, and accomplices.

Where it does not appear that a person knowingly, voluntarily, and with common intent with the alleged principal offender, united in the commission of the crime charged, such person is not an "accomplice." *In Re Bowman and Best*, 38 Nev. 484; 151 P. 517.

No distinction exists between an accessory before the fact and a principal, or between principals in the first and second degree in

cases of felony, and all persons concerned in the commission of a felony, whether they deliberately commit the offense or merely aid and abet in its commission, though not present, are properly indicted, tried, and punished as principals. *State v. Mangana*, 33 Nev. 511; 112 P. 693.

4. Accessory after fact—Assistance.

Under Pen. Code Utah, sec. 4075, providing that persons who, after full knowledge that a felony has been committed, conceal it from the magistrate, or harbor or protect the person charged therewith or convicted thereof, are accessories, where petitioner for habeas corpus, after a third person in Utah procured certain bonds from another by false pretenses, induced the defrauded person to delay the institution of criminal proceedings against the third person for a few days, during which the latter left the State of Utah, petitioner was not an accessory after the fact to the crime, since the words "harbor and protect" of the statute imply more than mere withholding of knowledge as to the whereabouts of the party charged, and necessarily contemplate some affirmative act or acts of concealment or assistance rendered to the principal personally; mere words of inducement or persuasion intended to cause a third party to delay filing a criminal charge not being enough to bring the party within the statute. In *Re Overfield*, 39 Nev. 30; 152 P. 568.

The act of the petitioner in leaving Utah himself with the stolen bonds on his person did not render him an accessory after the fact to the crime of obtaining property by false pretenses. *Id.*

IV. JURISDICTION

5. Constitutional and statutory provisions.

The act relating to crimes and punishments (Stats. 1961, c. 28), section 10 of which defines an accessory before the fact and makes him a principal, does not apply as against an accessory before the fact under an indictment which does not allege facts sufficient to constitute an offense by the principal. *Ex Parte Smith*, 33 Nev. 466; 111 P. 930.

V. VENUE

(A) PLACE OF BRINGING PROSECUTION

6. Locality of offense.

Knowingly subscribing or swearing to a false report and other acts by an officer, director, proprietor, agent or clerk of a bank are punishable in the county where the report was subscribed or sworn to or the acts committed. *Eureka Bank Cases*, 35 Nev. 85; 126 P. 655; 129 P. 308.

Under the Ohio act of April 28, 1908 (99 Ohio Laws, p. 228), imposing a penalty upon a father who neglects to provide for his minor child, and providing that the offense shall be held to have been committed in any county in which the child may be when complaint is made, the venue of the offense is in the county where the child is

when complaint was made or the indictment returned. *Ex Parte Lewis*, 34 Nev. 28; 115 P. 729.

(B) CHANGE OF VENUE

7. Discretion of court.

A motion for a change of venue is addressed to the sound discretion of the trial court, and where it is possible to secure an impartial jury the denial of the motion is within the court's discretion. *State v. Casey*, 34 Nev. 154; 117 P. 5.

8. Grounds for change—Local prejudice.

To require a change of venue under Comp. Laws, 4271, providing for a change of venue on the ground that a fair trial cannot be had in the county where the indictment is pending, it must appear that the prejudice against the accused is so great as to prevent a fair trial, and it is not sufficient merely to show that great prejudice exists against him. *Id.*

Where there was great feeling against accused in the town where the offense was committed, but that feeling did not permeate the entire county, which contained between four and five thousand possible jurors, and many of the jurors were drawn from portions of the county where the victim of accused was unknown, and where the crime was hardly known of or discussed, the refusal to grant a change of venue on the ground of the prejudice against accused was not erroneous. *Id.*

VI. LIMITATION OF PROSECUTIONS

9. Commencement of prosecution—Amendment of proceedings.

Under Rev. Laws, 7060, providing that no indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceeding be affected by reason of any defect or imperfection in matters of form which shall not tend to the prejudice of the defendant, and that the court may, on application, direct the indictment to be amended to supply the deficiency or omission when, by such amendment, the nature of the charge shall not be changed and the defense on the merits will not be prejudiced, where in an abundance of precaution the court, instead of directing an indictment to be amended to cure a clerical error, dismissed the indictment and reconvened the grand jury, which thereupon returned a second indictment, the new indictment should be regarded in effect as simply an amendment of the first indictment. In *Re Hironymous*, 38 Nev. 194; 147 P. 453.

VII. FORMER JEOPARDY

10. Elements—Jurisdiction of court.

An acquittal in such case would have barred a subsequent prosecution. *Ex Parte Simmons*, 34 Nev. 493; 125 P. 697.

11. Elements—Indictment or information.

Where the court in habeas corpus reviews an indictment framed under the act of March 13, 1909 (Stats. 1909, c. 92), and

commission of which the defendant was on trial, where there was nothing to show that at the time witnesses saw the revolver in defendant's possession he was engaged in the commission of any criminal offense. *State v. Switzer*, 38 Nev. 109; 145 P. 925.

In a prosecution for killing by stabbing, evidence that the defendant stabbed another man during a fight over the deceased a few minutes before he stabbed the deceased was admissible under the exception to the rule excluding evidence of collateral crimes, in that it was with reference to a contemporaneous crime, the circumstances of which were inseparable from the crime charged. *State v. Salgado*, 38 Nev. 64; 145 P. 919; 150 P. 764.

Evidence of other crimes can generally be considered only when it tends to establish motive, intent, absence of mistake or accident, a common plan or scheme, or identity. *State v. McFarlin*, 41 Nev. 486; 172 P. 371.

25. Acts showing intent or malice or motive.

In a prosecution for maliciously threatening injury to the person with intent to extort money, evidence of similar offenses committed about the same time are admissible to show intent. *State v. Vertrees*, 33 Nev. 509; 112 P. 42.

26. Character or reputation of accused — General reputation.

A person's general reputation may not be established by the opinion of the witness, but by the reputation he bears in the community in which he lives. *State v. Huber*, 38 Nev. 253; 148 P. 562.

(D) MATERIALITY AND COMPETENCY

27. Compelling accused to criminate himself.

Where testimony was freely and voluntarily given, accused cannot complain that he was compelled to be a witness against himself in violation of his constitutional right. *State v. Bachman*, 41 Nev. 197; 168 P. 733.

(E) BEST AND SECONDARY AND DEMONSTRATIVE EVIDENCE

28. Demonstrative evidence.

Where accused shot decedent and resisted immediate arrest by a citizen by stabbing him with a knife, and the defense relied on drunkenness and insanity, the court properly admitted the knife in evidence. *State v. Casey*, 34 Nev. 154; 117 P. 5.

The identification of a knife as that in defendant's possession the afternoon before the homicide and as the one used by defendant when he stabbed the deceased held to warrant its admission in evidence. *State v. Salgado*, 38 Nev. 65; 145 P. 919; 150 P. 764.

(F) ADMISSIONS, DECLARATIONS AND HEARSAY

29. Declarations by accused.

In a murder case, the testimony of a coconspirator in the robbery in which the murder was committed that defendant told

him that a third conspirator had committed the murder was admissible as a voluntary statement against the interest of the defendant connecting him with the murder, through the conspiracy to rob. *State v. Beck*, 42 Nev. 209; 174 P. 714.

The testimony of a coconspirator that after the crime the defendant stated to him that the robbery and murder had taken place was admissible to establish the conspiracy and murder and connect defendant with it, whether there was any subsisting interest in property thereby fraudulently acquired or not. *Id.*

The testimony of a coconspirator that defendant informed the witness that he and another were planning to rob the stage; that defendant later unqualifiedly stated the robbery had been committed and the stage driver murdered, was admissible. *Id.*

30. Declarations by accused — Proof and effect.

In a prosecution for burglary, it was not necessary that a foundation be laid for the admission of defendant's statements that he purchased the stolen jewelry in certain cities. *State v. Blaha*, 39 Nev. 115; 154 P. 78.

31. Declarations in presence of accused.

In a prosecution for murder, deceased's companion could not relate a conversation with deceased shortly before the killing, wherein he assumed that accused had made an earlier attack. *State v. Fronhofer*, 38 Nev. 448; 150 P. 846.

(G) ACTS AND DECLARATIONS OF CONSPIRATORS AND CODEFENDANTS

32. Grounds of admissibility.

In a prosecution for larceny of ore, statements of an accomplice, relating in part to the taking of the ore and its division according to agreement, were admissible in evidence; some ore having been taken thereafter, and the statements being material. *State v. Smith*, 33 Nev. 438; 117 P. 19.

A statement of an accomplice who conspired with accused to steal ore that he had made thousands of dollars for accused was not admissible in evidence in a prosecution for larceny; it not appearing whether the transaction referred to was illegal, and it not relating to the conspiracy. *Id.*

33. Furtherance or execution of common purpose.

Where a man and wife were jointly tried for threatening to commit personal injury with intent to extort money, and the evidence tends to show that the wife was an accessory before the fact, acts and declarations made by her in the consummation of the unlawful act are admissible against the husband. *State v. Vertrees*, 33 Nev. 509; 112 P. 42.

34. After accomplishment of object.

In a prosecution for larceny by conspiring with others to steal ore, evidence of a

was carrying a pistol and a belt filled with cartridges for the purpose of protecting himself and certain live stock against a possible attack by rabid coyotes, for the purposes of preliminary examination the magistrate would be justified in acting upon the probability that the accused would not be carrying an unloaded pistol for such purpose. *Ex Parte Molino*, 39 Nev. 360; 157 P. 1012.

It is not required upon preliminary examination, in order to warrant a magistrate in holding the accused to answer, that the evidence taken as a whole be sufficient to warrant a jury in reaching a conclusion of the guilt of the accused beyond a reasonable doubt. *Id.*

The general rule of Rev. Laws, 7180, providing that a conviction of crime cannot be had on the uncorroborated testimony of an accomplice, is to be applied where the sole witness against the defendant on his preliminary examination is an accomplice, and a commitment on his uncorroborated testimony is not on reasonable or probable cause. In *Re Oxley and Mulvaney*, 38 Nev. 380; 149 P. 992.

17. Judgment, sentence, and record.

The sentence imposed by a justice being imprisonment for thirty days, his entry of judgment of imprisonment for the term of "thirty," omitting the word "days," is merely a clerical mistake which may be corrected by him in the absence of defendant. *Ex Parte Breckenridge*, 34 Nev. 275; 118 P. 687; *Ann. Cas.* 1914B, 871.

Under Rev. Laws, 4851, general statute limiting jurisdiction of justice of peace, and prohibition act, secs. 7, 28, in prosecution for violation of latter act, a justice cannot assess greater punishment than fine of \$500 and six months' imprisonment in county jail; district court alone being authorized to impose excess fine and imprisonment mentioned in section 7. *Ex Parte Zwissig*, 42 Nev. 360; 178 P. 20.

18. Appeal and trial de novo.

Commitment by a justice under his judgment is valid, though appeal was taken from the justice to the district court, such court having dismissed the appeal, even if the dismissal was erroneous; it being an error which was within the jurisdiction of that court, and a final disposition of the case there. *Ex Parte Breckenridge*, 34 Nev. 275; 118 P. 687; *Ann. Cas.* 1914B, 871.

Rev. Laws, 7513, provides that, on appeal from a conviction before a justice, appellant shall file with the justice and serve upon the district attorney a notice, setting forth the character of the judgment and his intention to appeal therefrom. A notice of appeal was addressed to the district attorney and to an acting justice of the peace, stating that defendant intended to appeal, and did thereby appeal, from a conviction in the justice court of receiving and buying personal property from an intoxicated person, and from the judgment

and sentence of the justice court imposing a fine, and in the alternative an imprisonment, upon questions of both law and fact. Held, that notice of appeal was sufficient. *Jensen v. District Court*, 40 Nev. 135; 161 P. 162.

IX. ARRAIGNMENT AND PLEAS

19. Plea in abatement—Time and order of pleading.

The objection in a plea of abatement that no preliminary hearing on the charge was had or waived, and that no leave of court was obtained for the filing of the information, should be made before plea of not guilty is entered. *State v. Wells*, 39 Nev. 432; 159 P. 520.

20. Plea of not guilty—Withdrawal.

A motion to set aside a plea of not guilty for the purpose of interposing a plea in abatement is addressed to the sound judicial discretion of the trial court. *Id.*

X. EVIDENCE

(A) JUDICIAL NOTICE, PRESUMPTIONS, AND BURDEN OF PROOF

21. Judicial notice.

Supreme court will take judicial cognizance of the publication of the Revised Laws of the state, compiled and published under the supervision of the code commission, in which the crimes and punishments act, sec. 375 (Rev. Laws, 6640), appears. *State v. District Court*, 42 Nev. 218; 174 P. 1023.

22. Burden of proof—Insanity.

Notwithstanding Rev. Laws, 7163, providing that a defendant in a criminal action is presumed to be innocent until the contrary be proven, and in case of reasonable doubt as to his guilt he is entitled to be acquitted, an accused person, relying on the defense of insanity, has the burden of proof, and must satisfy the jury, by a preponderance of the evidence, that he is insane, there being a presumption of sanity. *State v. Nelson*, 36 Nev. 403; 136 P. 377.

(B) FACT IN ISSUE AND RELEVANT TO ISSUES, AND RES GESTÆ

23. Acts and statements of person injured.

Where the prosecuting witness, when first asked who stabbed her, gave an equivocal answer, and stated that others ought to know the man, her next charge that accused was guilty, made forty-five minutes after the occurrence, when her wounds had been dressed, and she was under no particular excitement, is not admissible as part of the *res gestæ*, there having been sufficient time to fabricate. *State v. Pappas*, 39 Nev. 40; 152 P. 571.

(C) OTHER OFFENSES AND CHARACTER OF ACCUSED

24. Other offenses as evidence of offense charged.

Such evidence was not within the rule prohibiting evidence of a separate and distinct crime unconnected with that for the

informed that they might be used against him; there being no statutory provision in this state that confessions shall not be admitted unless it appears that accused was warned that what he should say might be used against him. *State v. Mircovich*, 35 Nev. 485; 130 P. 765.

47. "Voluntary confession."

Where defendant with the two others was indicted for arson, and the complaining witness and the sheriff advised him to protect himself, that it would be better for him if he told the truth, the theory of the prosecution being that his codefendants were the principals who had instigated him to burn the prosecuting witness's store, and the prosecuting witness told him that he only wanted the principals, and others told him that his statements to a detective while in jail were sufficient to send him to prison, a confession elicited under such circumstances is not voluntary; for to be voluntary a confession must be made without hope or inducement of reward. *State v. Dye*, 36 Nev. 143; 133 P. 935.

(M) WEIGHT AND SUFFICIENCY

48. Credibility of witnesses.

Where testimony of a witness given upon cross-examination modifies, varies, or conflicts with the testimony given upon direct examination, it is the province of the magistrate, the court, or the jury, as the case may be, to determine the truth of the witness's testimony from the entire examination. *Ex Parte Molino*, 39 Nev. 360; 157 P. 1012.

49. Conclusiveness of evidence on party introducing it.

Statements or explanations made by the accused at the time of arrest may be introduced as a part of the state's case without binding the state to the truthfulness of such statements unless contradicted. The reasonableness of such statements is a matter entirely for the jury. *State v. Patchen*, 36 Nev. 510; 137 P. 406.

XI. TIME OF TRIAL AND CONTINUANCE

50. Discretion of court.

A continuance in a criminal case is within the discretion of the trial court, and in the absence of an abuse of discretion its action will be sustained. *Ex Parte Tranmer*, 35 Nev. 56; 126 P. 337; 41 L. R. A. (N.S.) 1095.

The question of continuance in criminal cases is always a matter within the sound discretion of the trial court, and, unless that tribunal abuses its power, its determination cannot be reviewed on appeal. *State v. Nelson*, 36 Nev. 403; 136 P. 377.

51. Grounds—Absence of counsel.

Where defendant when arraigned waived his right to counsel and was thereafter brought into court twice before trial and did not signify his desire for counsel until the morning of the trial more than two weeks after the order setting the case for trial, it was not an abuse of discretion to deny his

motion for a continuance for the purpose of securing counsel. *State v. MacKinnon*, 41 Nev. 182; 168 P. 330.

52. Grounds—Absence of witness.

To entitle an accused to a continuance on the ground of the absence of witnesses, it must appear that the witnesses are really material, that the accused has been guilty of no negligence and that the attendance of the witnesses can be had at the time to which the trial is deferred. *State v. Nelson*, 36 Nev. 403; 136 P. 377.

53. Application and affidavits for continuance.

An affidavit for a continuance on the ground of the absence of material witnesses which alleged that subpoenas had been placed in the hands of the sheriff, shows the very slightest diligence. *Id.*

Where an affidavit for continuance on the ground of the absence of witnesses showed that there was another witness by whom the same facts could be proven, it was not an abuse of discretion on the part of the trial court to refuse the continuance. *Id.*

Where an affidavit for a continuance on the ground of the absence of material witnesses showed that the witnesses were out of the jurisdiction of the court, and failed to give any reasonable ground for the belief that their attendance could be procured at some subsequent term, the refusal of a continuance was not an abuse of discretion, particularly where the testimony at the trial showed that the names of the witnesses were not correctly stated in the affidavit, and that the facts could be proven by another disinterested witness. *Id.*

54. Objections and exceptions.

Where accused, indicted under two indictments for a double murder, did not object to a continuation of the trial under one indictment, pending his trial under the other, resulting in his conviction and sentence to life imprisonment, and did not apply for a speedy trial, he could not complain that he was not given a speedy trial. *Ex Parte Tranmer*, 35 Nev. 56; 126 P. 337; 41 L. R. A. (N.S.) 1095.

Where accused, indicted under two indictments for a double murder, obtained a change of venue in the case of one indictment, but the other indictment was not removed, and at the next term of court the latter case was called for trial and subsequently removed to another county on a change of venue, accused could not complain that he was not given a speedy trial under such indictment, as guaranteed by the constitution and Rev. Laws, 7396. *Id.*

XII. TRIAL

(A) PRELIMINARY PROCEEDINGS

55. Separate trial of codefendants.

Where two persons are jointly indicted for grand larceny after preliminary examination in which they were jointly charged

with such crime, and after investigation by grand jury, they may, under the statute, demand separate trials which demand court would be required to grant. *State v. District Court*, 42 Nev. 219; 174 P. 1023.

(B) COURSE AND CONDUCT OF TRIAL

56. Counsel for accused.

The privilege of accused under Const. art. 1, sec. 8, to appear in person or with counsel may be waived, and, once waived, a judgment will not be reversed because the court at a later date refused to grant a continuance so that counsel might be employed unless the refusal was an abuse of discretion. *State v. MacKinnon*, 41 Nev. 182; 168 P. 330.

57. Comments on evidence or witnesses.

In a prosecution for homicide, where the state offered a purported dying declaration, oral statements by the court as to the nature of dying declarations, and as to weight of the one offered, made in the presence of the jury upon admitting the declaration in evidence, must be considered as an uncalled-for instruction. *State v. Scott*, 37 Nev. 412; 142 P. 1053.

(C) RECEPTION OF EVIDENCE

58. Compelling calling of witness.

It is not obligatory upon a district attorney to call all of the eyewitnesses to a transaction charged to be a crime. *State v. Milosovich*, 42 Nev. 264; 175 P. 139.

59. Presence of jury during inquiry.

The preliminary proof necessary for the admission of a dying declaration is for the court alone, and a request that the jury be withdrawn while such evidence is being heard should be granted. *State v. Scott*, 37 Nev. 412; 142 P. 1053.

60. Effect of admission.

In prosecution for embezzlement of certain money, the court should instruct as to the purpose for which other shortages might be considered by the jury. *State v. McFarlin*, 41 Nev. 486; 172 P. 371.

(D) OBJECTIONS TO EVIDENCE, MOTIONS TO STRIKE OUT, AND EXCEPTIONS

61. Time for objection.

Where one accused of homicide was permitted without objection to introduce evidence attacking deceased's reputation for peace and quiet before he had testified to an overt act of deceased looking toward his claim of justifiable homicide, it was too late for the state to object to questions on cross-examination of character witnesses as to whether they had heard of deceased's acts in testing whether they knew his reputation. *State v. Sella*, 41 Nev. 113; 168 P. 278.

62. Sufficiency and scope of objection.

The objectionable part of evidence must be specifically pointed out, a general objection to its admission being insufficient, unless it

is all incompetent. *State v. Smith*, 33 Nev. 438; 117 P. 19.

An objection to evidence on a specified ground waives all other grounds of objection. *Id.*

(E) ARGUMENTS AND CONDUCT OF COUNSEL

63. Rights and duties of prosecuting attorney.

While a prosecuting attorney should be vigorous in the prosecution of crime, his duty is not solely to convict, and he should protect the rights of an accused person and not seek to take unfair advantage. *State v. Scott*, 37 Nev. 412; 142 P. 1053.

64. Presentation of evidence—For prosecution.

Where, on a murder trial, a principal with accused in the murder, who had been previously convicted and sentenced to death, was produced as a witness by the state, and during the early part of his examination counsel for accused had asked the state in the jury's presence whether it was admitted that witness was then under conviction of a felony and in the state's prison, it was misconduct for the state's counsel to ask the witness whether he was not then in the penitentiary under sentence of death, where the only object of the state's question was to influence the jury to assess the death penalty against accused. *State v. Tranmer*, 39 Nev. 142; 154 P. 80.

65. Comments on evidence or witnesses.

Remarks of the district attorney in argument based on the evidence in the case will not be regarded as improper. *State v. King*, 35 Nev. 153; 126 P. 880.

66. Comments on failure of accused to testify.

In a prosecution for permitting gambling on defendant's premises, a statement by the district attorney in argument, "Why didn't defendant call any witnesses to the stand? Why didn't he put his brother on the stand, his attendant? * * * I will tell you why; he didn't dare do it," was not objectionable as a reference to defendant's failure to testify in his own behalf. *State v. Williams*, 35 Nev. 276; 129 P. 317.

67. Appeals to sympathy or prejudice.

A remark of the district attorney in arguing in favor of the death penalty that if the jury could not pronounce by their verdict the death penalty upon defendant, "Let's resurrect old Casey that killed Mrs. H. and let him live again," without stating the facts in regard to the commission of the crime for which Casey was hanged, and evidently with the assumption that the jurors were aware of the punishment suffered by him, was not beyond the bounds of legitimate argument. *State v. Mirco-vich*, 35 Nev. 486; 130 P. 765.

On a trial for murder, where a witness for the state on cross-examination had

informed that they might be used against him; there being no statutory provision in this state that confessions shall not be admitted unless it appears that accused was warned that what he should say might be used against him. *State v. Mircovich*, 35 Nev. 485; 130 P. 765.

47. "Voluntary confession."

Where defendant with the two others was indicted for arson, and the complaining witness and the sheriff advised him to protect himself, that it would be better for him if he told the truth, the theory of the prosecution being that his codefendants were the principals who had instigated him to burn the prosecuting witness's store, and the prosecuting witness told him that he only wanted the principals, and others told him that his statements to a detective while in jail were sufficient to send him to prison, a confession elicited under such circumstances is not voluntary; for to be voluntary a confession must be made without hope or inducement of reward. *State v. Dye*, 38 Nev. 143; 133 P. 935.

(M) WEIGHT AND SUFFICIENCY

48. Credibility of witnesses.

Where testimony of a witness given upon cross-examination modifies, varies, or conflicts with the testimony given upon direct examination, it is the province of the magistrate, the court, or the jury, as the case may be, to determine the truth of the witness's testimony from the entire examination. *Ex Parte Molino*, 39 Nev. 360; 157 P. 1012.

49. Conclusiveness of evidence on party introducing it.

Statements or explanations made by the accused at the time of arrest may be introduced as a part of the state's case without binding the state to the truthfulness of such statements unless contradicted. The reasonableness of such statements is a matter entirely for the jury. *State v. Patchen*, 36 Nev. 510; 137 P. 406.

XI. TIME OF TRIAL AND CONTINUANCE

50. Discretion of court.

A continuance in a criminal case is within the discretion of the trial court, and in the absence of an abuse of discretion its action will be sustained. *Ex Parte Tranmer*, 35 Nev. 56; 126 P. 337; 41 L. R. A. (N.S.) 1095.

The question of continuance in criminal cases is always a matter within the sound discretion of the trial court, and, unless that tribunal abuses its power, its determination cannot be reviewed on appeal. *State v. Nelson*, 36 Nev. 403; 136 P. 377.

51. Grounds—Absence of counsel.

Where defendant when arraigned waived his right to counsel and was thereafter brought into court twice before trial and did not signify his desire for counsel until the beginning of the trial more than two weeks after the order setting the case for trial, it was not an abuse of discretion to deny his

motion for a continuance for the purpose of securing counsel. *State v. MacKinnon*, Nev. 182; 168 P. 330.

52. Grounds—Absence of witness.

To entitle an accused to a continuance the ground of the absence of witnesses must appear that the witnesses are real material, that the accused has been guilty of no negligence and that the attendance of the witnesses can be had at the time at which the trial is deferred. *State v. Nelson*, 36 Nev. 403; 136 P. 377.

53. Application and affidavits for continuance.

An affidavit for a continuance on the ground of the absence of material witnesses which alleged that subpoenas had been placed in the hands of the sheriff, shows the very slightest diligence. *Id.*

Where an affidavit for continuance on the ground of the absence of witnesses showed that there was another witness by whom the same facts could be proven, it was not an abuse of discretion on the part of the trial court to refuse the continuance. *Id.*

Where an affidavit for a continuance on the ground of the absence of material witnesses showed that the witnesses were out of the jurisdiction of the court, and failed to give any reasonable ground for the belief that their attendance could be procured at some subsequent term, the refusal of a continuance was not an abuse of discretion, particularly where the testimony at the trial showed that the names of the witnesses were not correctly stated in the affidavit, and that the facts could be proven by another disinterested witness. *Id.*

54. Objections and exceptions.

Where accused, indicted under two indictments for a double murder, did not object to a continuation of the trial under one indictment, pending his trial under the other, resulting in his conviction and sentence to life imprisonment, and did not apply for a speedy trial, he could not complain that he was not given a speedy trial. *Ex Parte Tranmer*, 35 Nev. 56; 126 P. 337; 41 L. R. A. (N.S.) 1095.

Where accused, indicted under two indictments for a double murder, obtained a change of venue in the case of one indictment, but the other indictment was not removed, and at the next term of court the latter case was called for trial and subsequently removed to another county on a change of venue, accused could not complain that he was not given a speedy trial under such indictment, as guaranteed by the constitution and Rev. Laws, 7396. *Id.*

XII. TRIAL

(A) PRELIMINARY PROCEEDINGS

55. Separate trial of codefendants.

Where two persons are jointly indicted for grand larceny after preliminary examination in which they were jointly charged

defendant had testified in his own behalf, and that this was his legal right, and that the jury were not permitted to reject his testimony merely because he was accused. *State v. Blaha*, 39 Nev. 115; 154 P. 78.

77. Reasonable doubt.

In a prosecution for homicide an instruction on reasonable doubt, which contrasted the rule as to burden of proof in civil and criminal cases, and gave as the reason for the latter rule that "the charity of the law and its solicitude for the safety of the innocent are such that an artificial presumption of innocence attends a person accused of crime," was not an incorrect statement of the law because of the use of the words "charity" and "artificial," and could not have misled the jury, where it was one of nine instructions on the subject of presumption of innocence and reasonable doubt. *State v. Skinner*, 37 Nev. 107; 139 P. 773.

78. Application of instructions to case.

Where, in a prosecution for committing a crime, the state offered evidence of the conduct of the accused and the complaining witness earlier in the evening before the alleged assault, and sought to draw from such conduct the conclusion of a preconceived design on accused's part to commit the crime, and the acts testified to were as susceptible of an innocent as a criminal construction, it was error to refuse to charge that when a man's conduct may from the evidence be reasonably referred to two motives—one criminal and the other innocent—the jury should presume the innocent, and not the criminal motive. *State v. Carey*, 34 Nev. 310; 122 P. 868.

Under conclusive evidence of permanent disfigurement, it is not error to refuse instruction permitting conviction of the lesser offense of assault, under Rev. Laws, 6418, which applies only if permanent disfigurement is not shown. *State v. Enkhous*, 40 Nev. 1; 160 P. 23.

(H) REQUESTS FOR INSTRUCTIONS

79. Necessity.

Failure to instruct on the maxim, "Falsus in uno, falsus in omnibus," was not error, where accused made no request for such instructions. *State v. Blaha*, 39 Nev. 115; 154 P. 78.

80. Further or more specific instructions.

Where the court defines the crime in the language of the statute, defendant desiring a more particular instruction should request it. *State v. Switzer*, 38 Nev. 108; 145 P. 925.

81. Instructions already given.

Under Comp. Laws, 4649 (Rev. Laws, 7165), providing that only the statutory definition of reasonable doubt shall be given, the court, having given such definition, did not err in refusing the accused's requested instruction on reasonable doubt. *State v. Carey*, 34 Nev. 310; 122 P. 868.

(J) CUSTODY, CONDUCT, AND DELIBERATIONS OF JURY

82. Urging or coercing agreement.

In a prosecution for homicide, action of the court in calling in the jury, which had been out some time, and ascertaining how they stood numerically, and in urging them to reach a verdict if they could conscientiously do so, stating that the trial had already been a great expense to the county, is not reversible error. *State v. Clark*, 36 Nev. 472; 135 P. 1083.

Where the guilt of accused charged with murder depended on whether there was a prior understanding between him and a third person who fired the fatal shot, and the state chiefly relied on the fact that accused raised his hand and said "All right," just prior to the shot, to establish concert of action, the action of the court in calling in the jury after deliberating for some time, and ascertaining that they stood numerically 11 to 1, then urging them to reach a verdict if they could conscientiously do so, stating that the trial had been a great expense to the county, and in the presence of the jury denying accused an exception and threatening accused's counsel with punishment for contempt, was prejudicial error. *State v. Clark*, 38 Nev. 304; 149 P. 185.

(K) VERDICT

83. Form and language.

A verdict will not be held void for uncertainty if its meaning can be determined by reference to the record. *Ex Parte Booth*, 39 Nev. 183; 154 P. 933; L. R. A. 1916F, 960.

XIII. MOTIONS FOR NEW TRIAL AND IN ARREST

84. Misconduct of counsel for prosecution.

The remarks of the district attorney in his argument that accused on trial for assault with intent to murder was a resident of the tenderloin district, and resided with a prostitute, are improper, when not justified by the evidence, and, where exception was taken at the time, the court, satisfied that the jury was prejudiced thereby, may grant a new trial. *State v. Orr*, 34 Nev. 297; 122 P. 73.

85. Application for new trial—Bill of exceptions or statement of case.

A motion for a new trial may be heard by the trial court without a bill of exceptions, statement, or affidavit, when it is based on matters which transpired before, and are within the knowledge of the court. *State v. Bauer*, 34 Nev. 305; 122 P. 76.

XIV. JUDGMENT, SENTENCE, AND FINAL COMMITMENT

86. Jurisdiction.

Where, on trial for a criminal offense, the evidence without conflict shows that defendant is exempted from the penal provisions of the act (Stats. 1903, c. 114), the court is without power to render a judgment of conviction. *Ex Parte Davis*, 33 Nev. 309; 110 P. 1131.

there is a real contest, the amount in controversy, which ordinarily controls in determining the jurisdiction of the courts, may be considered to be the same in a mandamus proceeding preliminary and incidental to an action on the bonds that it would be in a suit to recover judgment upon them, which is their face value. In suits upon notes and bonds and in actions for damages it is not necessary to prove the value of the claim in advance of the trial. *State ex rel. White v. Dickerson*, 33 Nev. 540; 113 P. 105.

IV. COURTS OF LIMITED OR INFERIOR JURISDICTION

8. Jurisdiction.

When a cause or matter is properly before a court for determination upon the merits, an order to dismiss or to strike is an act in excess of jurisdiction. *Radovich v. W. U. Tel. Co.*, 36 Nev. 341; 135 P. 920; 136 P. 704.

Const. art. 6, sec. 6, gives to district courts original jurisdiction in cases involving the legality of any tax, assessment or municipal fine, etc.; section 8 requires the legislature to determine the number of justices of the peace in each city, etc., and provides that justice's courts shall not have jurisdiction of cases conflicting with the jurisdiction of the courts of record; and section 9 requires the legislature to fix by law the jurisdiction of municipal courts. The charter of the city of Reno (art. 14, sec. 1) created a municipal court, by section 3 gave it jurisdiction as then provided for justices of the peace as to civil or criminal cases for the violation of any ordinance, and by section 6 provided that it should be treated as a justice's court. In case its proceedings should be questioned. *Rev. Laws, 5721*, relating to transfer of causes from justice's court, provides that the parties cannot give evidence on questions involving the legality of any tax, municipal fine, etc. An ordinance imposed a certain license upon every attorney practicing his profession in the city, payable quarterly in accordance with the gross receipts, and thereunder petitioner was convicted in the municipal court and committed. Held, where the issue involved the legality of a tax and the constitutionality of the ordinance imposing the tax, the municipal court had no jurisdiction, and was bound to transfer the proceedings to the district court. *In Re Dixon*, 40 Nev. 228; 161 P. 737.

9. Municipal court—Procedure.

No plea by a defendant in a justice's court need be verified, and such rule applies with equal force to the municipal court. *Id.*

VI. COURTS OF APPELLATE JURISDICTION

(A) GROUNDS OF JURISDICTION

10. Issuance of prerogative or remedial writs.

In an action for the possession of per-

sonal property, where the sheriff redelivered it to defendant, although defendant's sureties had not justified in accordance with the statute, and the trial court refused to issue a writ of mandamus compelling the sheriff to deliver the property to the plaintiff, plaintiff is entitled to petition the supreme court for the issuance of an original writ of mandamus, having exhausted his remedies below. *State v. Lamb*, 37 Nev. 19; 138 P. 907.

By Const. art. 6, sec. 4, conferring jurisdiction upon the supreme court to issue writs of prohibition, the intention of the framers was undoubtedly to confer the right to issue the writ as it had been recognized at common law. *O'Brien v. Commissioners*, 41 Nev. 91; 167 P. 1007.

VII. UNITED STATES COURTS

(A) JURISDICTION AND POWERS

11. Powers of state legislatures as to United States courts.

Despite Judicial Code (Act March 3, 1911, c. 231), sec. 267, 36 Stat. 1163 (Comp. St. 1913, sec. 1244), providing that suits in equity shall not be sustained in any court of the United States where a plain, adequate, and complete remedy at law may be had, the several states cannot, save in so far as the federal courts apply their remedies, restrict the equitable jurisdiction of the federal courts, which, unless abridged by Congress, is coextensive with that of the English court of chancery at the time of the Revolution. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 319.

12. Jurisdiction of entire controversy.

In a suit within the jurisdiction of the district court, on the ground of diverse citizenship, to secure a division of community property and an accounting against a husband, where it was determined that the community property must be divided, and where a master found that the wife was entitled to an additional money judgment sufficient to exhaust the husband's estate, creditors of the husband, deceased insolvent, some of whose claims were superior to any judgment that might be rendered in favor of plaintiff, might intervene and present their claims; whereupon the court, without surrendering any of the property to the administrator of the deceased husband appointed by the state court, was required to ascertain how much of the fund might equitably be applied to plaintiff's judgment, and administer complete justice in the controversy. *Johnson v. Johnson*, 225 F. 413.

After jurisdiction on the ground of diverse citizenship attached to a wife's suit for an accounting and for a division of community property, the court was bound to consider all issues properly presented, and thereafter render a judgment and decree, and its duty to enforce its decrees is as binding as its duty to render them; "jurisdiction" being the power to

96. Bill of exceptions—Necessity.

The state appealing from an order granting a new trial must present a bill of exceptions or statement on appeal to show wherein the order of the trial court was erroneous, or otherwise the verdict will be affirmed. *State v. Orr*, 34 Nev. 297; 122 P. 73.

An order granting a new trial for improper remarks of the district attorney in his argument will be affirmed, in the absence of a bill of exceptions showing error in the ruling. *Id.*

A motion for a new trial under Rev. Laws, 7234, authorizing a new trial on the ground that the verdict is contrary to law or evidence, may be determined without any bill of exceptions, or statement or affidavit. *Id.*

97. Bill of exceptions—Settlement, signing and filing.

Defendant having been convicted on June 26, 1909, of making and forging an indorsement on an obligation of the United States, after a trial in which he introduced no evidence, but relied entirely on a novel question of law, sentence was delayed that he might prepare a motion for new trial, and was not pronounced until July 10, 1909. Defendant asked for twenty days in which to prepare and present a bill of exceptions, and an order to that effect was granted. The official stenographer, during all of the ten days and up to July 10, was engaged almost continually in court in reporting other cases, and, as the necessary data for the bill of exceptions could only be obtained from her, the preparation of the bill was not delayed by the inadvertence of counsel in failing to prepare the same. On July 13 they applied for an order, to be entered nunc pro tunc as of July 6, granting them forty days from that date within which to prepare, serve, and file a bill of exceptions, and that defendant be relieved from the consequences of delay and default in failing to ask for additional time within ten days after verdict. Held, that rule 22, providing that a bill of exceptions must be prepared in form and presented to the judge within ten days after verdict, and in default thereof the exceptions will be deemed waived, was merely directory, and did not preclude the court, under the circumstances stated, from granting additional time after the original time had expired. *United States v. Waite*, 193 F. 258.

98. Conduct of trial.

Where the bill of exceptions does not contain in full the motion of the defendant to strike out certain remarks of the prosecuting attorney, nor the ruling of the court, nor the evidence in the case, the refusal of the motion cannot be considered as reversible error. *State v. Vertrees*, 33 Nev. 500; 112 P. 42.

(E) ASSIGNMENT OF ERRORS AND BRIEFS**99. Briefs.**

The supreme court need not pass on an

assignment to rulings on evidence, where the questions objected to are not quoted in the brief, nor reference made to the place in the bill of exceptions where the questions and rulings appear. *State v. Milosovich*, 42 Nev. 263; 175 P. 139.

(F) DISMISSAL, HEARING AND REHEARING**100. Dismissal.**

A rule similar to that adopted by the California courts, under statutes similar to those of this state, of dismissing appeals taken by a defendant who thereafter escaped and who does not return to custody within a time specified ought to be and, in future, doubtless will be applied. *State v. Skinner*, 37 Nev. 107; 139 P. 773.

(G) REVIEW**101. Facts or proceedings not shown by record.**

In the absence of a showing in the record of the grounds on which jurors impaneled were excused, it will be presumed on appeal that the court properly exercised its discretion. *State v. Switzer*, 38 Nev. 108; 145 P. 925.

Where record does not purport to contain all the evidence given at the trial, appellate court will not presume that the district attorney discussed matters not covered by the evidence. *State v. Sella*, 42 Nev. 467; 168 P. 278; 180 P. 980.

102. Amendments and rulings as to indictment or pleas.

The decision of the trial court on motion to withdraw a plea to the merits of an information for the purpose of interposing a plea in abatement will not be disturbed, where its discretion has been exercised without effecting a manifest injustice, and where there is no improper assumption of jurisdiction. *State v. Wells*, 39 Nev. 432; 159 P. 520.

103. Discretion of lower court—Reception of evidence.

The court has wide latitude as to allowing state's counsel on cross-examination of accused to go into matters as to his prior life, and a conviction will not be reversed, except for abuse of discretion. *State v. Milosovich*, 42 Nev. 264; 175 P. 139.

104. Discretion of lower court—New trial.

An order granting accused a new trial for insufficiency of evidence to support a conviction will not be disturbed on appeal except in case of abuse of discretion. *State v. Bauer*, 34 Nev. 305; 122 P. 76.

105. Conclusiveness of verdict.

A finding of a jury as to whether one was an accessory is conclusive. *State v. Smith*, 33 Nev. 438; 117 P. 19.

Judgment in a criminal case will not be reversed for insufficiency of evidence where the verdict is supported by substantial evidence. *State v. Whitaker*, 39 Nev. 159; 154 P. 927.

106. Harmless error—Presumptions as to effect of.

Where the court gives several instructions on the same subject, some being correct and others erroneous, injury must be presumed, unless the record clearly shows otherwise. *State v. Scott*, 37 Nev. 412; 142 P. 1053.

By the express provisions of section 589 of the criminal practice act (Comp. Laws, 4554) no error in criminal proceedings shall render them invalid, unless it actually prejudices the accused in a substantial right. *State v. Smith*, 33 Nev. 438; 117 P. 19.

107. Harmless error—Preliminary proceedings.

Since the state could have prosecuted the offense of horse stealing by information, special injury will not result to accused by trying him upon an indictment, though one of the grand jurors who found it was a nonresident. *McComb v. District Court*, 36 Nev. 417; 136 P. 563.

108. Harmless error—Conduct of trial.

In a prosecution for felony, where a witness was examined by the state for a few moments before accused was brought in, neither the court nor the prosecution noting his absence, and his attorneys, who were present, not objecting on account of his absence, the error will be considered harmless where the testimony was stricken out and later reintroduced without objection, particularly as the prosecution was had before the enactment of Rev. Laws, 7123, which requires the defendant's presence at a trial for felony, under the old laws which did not contain any such requirement. *State v. Clark*, 36 Nev. 472; 135 P. 1083.

Where a juror, on voir dire, disclosed bias on the ground of hereditary insanity, but showed no bias to the legal defense of insanity, the refusal to appoint triers to determine his bias on the ground of hereditary insanity was not prejudicial. *State v. Casey*, 34 Nev. 154; 117 P. 5.

During the cross-examination of the complainant, a dispute arose whether the witness had testified to more than one attempt on the accused's part to commit the offense, and following a statement of counsel for defendant as to the testimony of the witness on direct examination, to which objection was made that the same was not in accordance with the testimony of the witness, the judge interposed the remark that he did not believe that the court, counsel, or jury had that impression of the evidence. What the witness actually testified was read by the reporter in the presence of the jury. Held, that the court's remarks were not prejudicial to accused. *State v. Carey*, 34 Nev. 309; 122 P. 868.

In a prosecution for homicide, where the court, after the case was submitted, urged the jury to reach a verdict, denied accused an exception thereto, and threatened the accused's counsel with punishment for contempt because of his persistence in demand-

ing an exception, the action of the court, though improper, cannot be complained of by accused, where the objection was considered without exception. *State v. Clark*, 36 Nev. 472; 135 P. 1083.

109. Harmless error—Rulings as to evidence.

The refusal of the court to require the district attorney to produce the confession of the accomplice for use by defendant on cross-examination of the accomplice is not ground for reversal; there being nothing in the record showing that defendant was prejudiced by the refusal. *State v. Bachman*, 41 Nev. 198; 168 P. 733.

110. Harmless error—Admission of evidence.

In a criminal prosecution, the improper admission of evidence of the description of the criminal, given to the arresting officer by a third person, was harmless, where it appeared that the officer received and acted on the description given directly to him by the prosecutrix. *State v. Nelson*, 36 Nev. 403; 136 P. 377.

Error in admitting evidence of a fact which was apparently conceded, and to which other witnesses testified, was harmless to accused. *State v. Smith*, 33 Nev. 438; 117 P. 19.

Error in admitting a statement of a coconspirator, in a prosecution for larceny by conspiring with others, that another conspirator was foolish, or he would not have been caught, and that if he had done as the speaker wished he would not have gone there, was harmless to accused, because he was not mentioned in the statement. *Id.*

Any error in admitting an alleged confession in evidence could not have prejudiced the accused where he testified to substantially the same facts stated in the confession. *State v. Urle*, 35 Nev. 268; 129 P. 305.

Admission of improper evidence is not as a rule prejudicial, where subsequently withdrawn, with directions to the jury to disregard it. *Id.*

Where accused, on trial for murder perpetrated in the commission of a robbery, admitted that he was in possession of a watch of decedent, and sought to excuse his possession, the error, if any, in admitting evidence as to the number of the watch of decedent, was harmless. *State v. Mangana*, 33 Nev. 511; 112 P. 693.

Error, if any, in permitting witnesses to testify to conclusions relative to statements made by accused to officers while he was under arrest, was harmless, where the whole conversation between the defendant and the officers was detailed, and it clearly appeared that the statements were freely and voluntarily made. *State v. Blaha*, 39 Nev. 115; 154 P. 78.

The court admitted accused's alleged confession in evidence, and afterwards, upon it appearing that it was made after the sheriff had told accused that it would be

better for him to tell the truth, ordered the confession stricken and directed the jury to disregard it, and also instructed that the jury must not consider any evidence stricken by order of the court, but must decide the case solely upon the evidence actually given and allowed. Held, that any error in admitting the confession in evidence was cured by the court's action. *State v. Urie*, 35 Nev. 268; 129 P. 305.

If there was error in the admission of the transcript of certain testimony in a habeas corpus proceeding in which accused resisted extradition in another case, it was cured by his testimony relating to the same facts. *State v. Bachman*, 41 Nev. 197; 168 P. 733.

In a homicide case, it is not reversible error to admit the testimony of a coconspirator concerning statements of defendant prior to prima facie proof of conspiracy where the conspiracy was thereafter proven. *State v. Beck*, 42 Nev. 209; 174 P. 714.

The testimony of a coconspirator, that defendant stated that a third conspirator, who was not present, had committed the murder, was not prejudicial to the defendant, since it tended to connect him with the crime. *Id.*

111. Harmless error—Examination of witnesses.

On a trial for murder, where a joint principal in the crime with accused who had been previously convicted and sentenced to death is called as a witness by the state, it is reversible error to allow the state, for the purpose of influencing the jury to inflict the death penalty on accused, to ask the witness if he is in the state's prison under sentence of death. *State v. Tranmer*, 39 Nev. 142; 154 P. 80.

Where, on a murder trial, a witness was allowed to refresh his memory as to a statement made by accused, by reading his testimony at the coroner's inquest, and his testimony given after such refreshing was substantially the same as before, there was no reversible error, since accused was not prejudiced thereby. *Id.*

Refusing to permit one accused of homicide to cross-examine witnesses as to whether they knew of certain acts of deceased showing that he was of turbulent spirit was harmful and substantial error. *State v. Sella*, 41 Nev. 114; 168 P. 278.

112. Harmless error—Arguments and conduct of counsel.

Remarks of prosecuting attorney in argument alluding to rumors being prevalent that the jury, because of personal association and friendships, would not have the courage to send accused to the penitentiary were reversible error. *State v. Comisford*, 41 Nev. 175; 168 P. 287.

113. Harmless error—Instructions.

That a misstatement of the law in the court's instructions in a murder case was

due to a clerical error will not render the error harmless. *State v. Scott*, 37 Nev. 412; 142 P. 1053.

An instruction to convict if permanent disfigurement is shown, though incomplete, in failing to define permanent disfigurement, is not prejudicial, where the evidence is without conflict as to extent of the injury which manifestly was a permanent disfigurement, especially in the absence of request for further instruction. *State v. Enkhhouse*, 40 Nev. 1; 160 P. 23.

114. Harmless error—Failure or refusal to give instructions.

Where the information charging robbery did not allege the use of chloral hydrate or any drug to render unconscious the person robbed, but alleged the robbery was committed by force and violence, and the evidence showed that, while much chloral hydrate was found on defendants, some was in solution, and in one bottle a foreign substance, as sugar or digitalis, had been mixed with chloral hydrate, defendants were not prejudiced by an instruction that the state must prove beyond a reasonable doubt that a drug was actually administered to the person robbed, etc., instead of their request using the phrase "such chloral hydrate," instead of the phrase "a drug." *State v. Bond*, 41 Nev. 465; 172 P. 367.

115. Harmless error—Decision on motion for new trial.

The failure of counsel for accused to sign a motion for a new trial made in open court by him on the written grounds stated in the motion is not material error. *State v. Orr*, 34 Nev. 297; 122 P. 73.

116. Harmless error—Error waived in appellate court.

Where no briefs are filed, and counsel for accused fails to appear and argue the case after notice, the supreme court may, under Comp. Laws, 4449, affirm the judgment without reviewing the assignments of error. *State v. Jorme*, 34 Nev. 307; 122 P. 483.

Accused's counsel waived assignments of error not discussed in his brief. *State v. Urie*, 35 Nev. 268; 129 P. 305.

(H) DETERMINATION AND DISPOSITION OF CAUSE

117. Reversal.

Where evidence showed conclusively and was undisputed that the accused killed deceased with a knife, the admission of his statements as to his possession of the knife by which deceased was killed, even if erroneous because he was not warned that they might be used against him, did not require a reversal in view of Rev. Laws, 7302, requiring the court, after hearing the appeal, to give judgment without regard to technical error or defect not affecting the substantial rights of the parties, and section 7469 providing that no judgment shall be set aside or new trial granted on the ground of misdirection of the jury or improper admission or rejection of evidence

or for error as to any matter of pleading or procedure, unless the court, after an examination of the entire case, is of the opinion that the error has resulted in a miscarriage of justice or has actually prejudiced the defendant in respect to a substantial right. *State v. Mircovich*, 35 Nev. 485; 130 P. 765.

Where, on a murder trial, the testimony of a witness went solely to the identity of accused, and his participation in the crime had been clearly shown, the remark of the trial judge, made while counsel for defense was reading questions and answers of the witness at a former trial for the purpose of impeaching him, that " * * * there is apparently no inconsistencies or contradictions," there being no substantial conflict between the two testimonies, was harmless error under the statute providing for the disregard of technical errors, where no substantial rights are denied. *State v. Tranmer*, 39 Nev. 142; 154 P. 80.

118. Reversal—Ordering new trial.

Where a crime was plainly committed, and on another trial evidence showing accused's guilt might be introduced, accused will not on reversal for insufficiency of the evidence be discharged. *State v. Fronhofer*, 38 Nev. 448; 150 P. 846.

XVII. PUNISHMENT AND PREVENTION OF CRIME

119. Extent of punishment.

Rev. Laws, 7260, provides that, when a person is convicted of any felony for which no fixed period of confinement is imposed by law, the court shall direct such person to be confined in the state prison for a term of not less than the minimum nor greater than the maximum term of imprisonment prescribed by law; section 7261 provides that the board of pardons may at any time after the expiration of the minimum term of imprisonment direct that such prisoner shall be released by parole; while section 7268 provides that any person convicted of grand larceny shall be punished by imprisonment in the penitentiary for a term not less than one nor more than fourteen years. Held, that under the first-mentioned statute, the court, upon conviction, could only impose an indeterminate sentence from one to fourteen years and could not fix a greater or lesser minimum than that provided by the statute, for the board of pardons may parole the prisoner at any time after the expiration of the minimum sentence. *Ex Parte Melosevich*, 36 Nev. 67; 133 P. 57.

See Appeal and Error, 69; Assault and Battery, 3; Ball, 1, 2, 3; Burglary, 1; Convicts, 1; Courts, 9, 22; False Pretenses, 1, 2; Grand Jury, 3; Habeas Corpus, 1, 5; Homicide, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28; Husband and Wife, 9; Indians, 1; Indictment and Information, 2, 3, 4, 5, 8, 9; Jury, 7, 9, 12, 13; Larceny, 2, 3, 4; Lewdness, 1; Mayhem, 1, 2; Rape, 1, 2; Robbery, 1, 2, 3; Weapons, 1; Witnesses, 9, 13.

CROSS-APPEAL

See Appeal and Error, 86.

CROSS-EXAMINATION

See Appeal and Error, 117; Criminal Law, 48, 103; Witnesses, 8.

CRUELTY

See Divorce, 9.

CURE BY OTHER TESTIMONY

See Criminal Law, 110.

CUSTODY

See Habeas Corpus, 2.

CUSTODY OF PROPERTY

See Attachment, 3, 4.

DAMAGES

III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES.

1. Expenses incurred—Breach of contract.

IV. LIQUIDATED DAMAGES AND PENALTIES.

2. Certainty as to amount of actual damages.

3. Questions for jury.

V. EXEMPLARY DAMAGES.

4. Injuries for which awarded.

5. Grounds for exemplary damages.

VI. MEASURE OF DAMAGES.

(C) *Breach of Contract.*

6. Prevention or obstruction of performance.

VII. INADEQUATE OR EXCESSIVE DAMAGES.

7. Personal injury—Permanent injuries.

VIII. PLEADING, EVIDENCE, AND ASSESSMENT.

(A) *Pleading.*

8. Pecuniary losses.

(B) *Evidence.*

9. Health and physical condition of person injured.

(C) *Proceedings for Assessment.*

10. Instructions.

III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES

1. Expenses incurred—Breach of contract.

A building contractor who is responsible under the contract for damages occasioned by the construction of an extra story is liable to the owner for an amount he was compelled to pay a tenant for damages occasioned by a defective roof put on by the contractor. *Schuler v. Golden*, 37 Nev. 281; 142 P. 221.

IV. LIQUIDATED DAMAGES AND PENALTIES

2. Certainty as to amount of actual damages.

A stipulation in a contract for excavation and for removal of the material exca-

vated, and the construction of a stone foundation wall for \$1,156, that for the performance of the covenants the parties bind themselves each, and to the other, in \$800 liquidated damages to be paid by the failing party, provides for a penalty for breach and not for liquidated damages, for the damages for a breach are capable of ascertainment with reasonable accuracy. *Golden v. McKim*, 37 Nev. 205; 141 P. 676.

3. Questions for jury.

Though both parties to a contract sought to enforce a provision stipulating for a penalty as a stipulation for liquidated damages, the court must determine the nature of the stipulation, and, if it provides for a penalty only, will restrict both parties to actual damages sustained by a breach. *Id.*

V. EXEMPLARY DAMAGES

4. Injuries for which awarded.

Exemplary damages are allowable in proper cases, and may be recovered in an action for the tortious breach of a contract as well as for a tort unconnected with any contract. *Forrester v. S. P. Co.*, 36 Nev. 248; 134 P. 753; 48 L. R. A. (N.S.) 1.

5. Grounds for exemplary damages.

Punitive damages should be awarded only where the wrongdoer is unduly negligent or the acts are unnecessarily aggravated. *Burrus v. N. C. O. Ry. Co.*, 38 Nev. 156; 145 P. 926; L. R. A. 1917D, 750.

Where injury to a railroad employee resulted from a broken tongue and a knuckle on a car not easily observable, or from the engineer backing his engine without signal, a verdict for punitive damages was unauthorized. *Knock v. T. & G. R. R. Co.*, 38 Nev. 144; 145 P. 939; L. R. A. 1915F, 3.

VI. MEASURE OF DAMAGES

(C) BREACH OF CONTRACT

6. Prevention or obstruction of performance.

Where breach consists in preventing performance of contract without fault of other party, latter is entitled to compensation for what he has already expended toward performance, less materials in hand, and all profits that he would have realized by performing the whole contract. *Bradley v. N. C. O.*, 42 Nev. 411; 178 P. 906.

VII. INADEQUATE OR EXCESSIVE DAMAGES

7. Personal injury—Permanent injuries.

Plaintiff came in contact with a live electric wire negligently maintained by defendant. He suffered the loss of one finger and electric burns about his hands and shoulder. His fingers were partially stiffened, as were also his arm and shoulder, but they were not shown to have been permanently injured, nor their usefulness even temporarily entirely impaired. Held, that a verdict in plaintiff's favor for \$15,000 was excessive and should be reduced to \$7,500. *Cutler v. Pittsburg Silver Peak*, 34 Nev. 45; 116 P. 418.

In an action for injuries to an employee 58 or 59 years old, who prior to the injury was earning between \$80 and \$90 a month, it appeared that the injuries were of a severe and painful nature, permanently affecting one side of his body and depriving him of the use of one arm, but it did not appear that he would be entirely deprived of ability to enter into lines of employment involving less laborious tasks than his former employment. It also appeared that he had suffered from malarial fever, pneumonia, and cerebrospinal fever, verging on cerebrospinal meningitis, which might or might not materially affect his expectancy of life. A physician's testimony that in his opinion a man in plaintiff's condition prior to the accident could perform labor for at least ten years longer was uncontradicted. Held, that a verdict for \$15,000 was excessive, and required a new trial, unless plaintiff would consent to a modification of the judgment to \$10,000. *Konig v. N. C. O. Ry.*, 36 Nev. 188; 135 P. 141.

A verdict for \$25,500 for the loss of the right arm below the elbow of a man 29 years of age, with eleven years experience in railroad work in various positions, and earning about \$170 a month as conductor and brakeman, is excessive, and will be reduced to \$15,000. *Knock v. T. & G. R. R. Co.*, 38 Nev. 144; 145 P. 939; L. R. A. 1915F, 3.

VIII. PLEADING, EVIDENCE, AND ASSESSMENT

(A) PLEADING

8. Pecuniary losses.

In action against railroad for breach of fencing contract, plaintiff held entitled, under allegation of general damages, to recover loss of profits resulting from railroad's refusal to permit him to complete performance. *Bradley v. N. C. O.*, 42 Nev. 412; 178 P. 906.

(B) EVIDENCE

9. Health and physical condition of person injured.

A witness may testify to the manifestations of pain he saw plaintiff exhibit while in a hospital because of the injury for which he sued. *Sherman v. Southern Pacific Co.*, 33 Nev. 385; 111 P. 416; 115 P. 900; Ann. Cas. 1914A, 217.

(C) PROCEEDINGS FOR ASSESSMENT

10. Instructions.

In an employee's action for injuries, it was not error to charge that, if the jury found for plaintiff, they should assess his damages at a sum not greater than that claimed in the complaint; this not obligating the jury to find a verdict in that specific amount. *Konig v. N. C. O. Ry.*, 36 Nev. 186; 135 P. 141.

See *Animals*, 2; *Assault and Battery*, 1, 2; *Evidence*, 18; *Libel and Slander*, 1, 2, 3; *Waters and Watercourses*, 19.

DAMAGES FOR BREACH OF CONTRACT

See Corporations, 1.

DAMAGES FOR CONVERSION

See Trover and Conversion, 5.

DAMAGES FOR WRONGFUL GARNISHMENT

See Garnishment, 1, 2.

DAMS

See Evidence, 18; Waters and Water-courses, 9, 12, 13, 17, 18, 19.

DANGEROUS POSITION

See Street Railroads, 2.

DEALING WITH CLIENT

See Attorney and Client, 5.

DEATH

II. ACTIONS FOR CAUSING DEATH.

(E) *Damages, Forfeiture, or Fine.*

1. Exemplary damages.

II. ACTIONS FOR CAUSING DEATH

(E) **DAMAGES, FORFEITURE, OR FINE**

1. **Exemplary damages.**

In an action against a corporation for decedent's wrongful death caused by the negligence of the manager in charge of its electrical appliances in permitting an electric high-tension wire to rest on an iron covered passageway, from which decedent received a shock which caused his death, plaintiff could not recover exemplary damages authorized in certain cases of wrongful death by Comp. Laws, Nev. 3984, by merely proving that defendant was not notified of the sagging wire, and that its agent promised to repair the same, in the absence of proof that defendant company in any way participated in the negligence of its agent, or of bad faith, evil intent, malice, or intentional wrong, or that defendant knowingly employed an unfit and incompetent servant. *Benner v. T. R. G. E. Co.*, 193 F. 740.

Comp. Laws Nev. 3983, provides that whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the persons who, or the corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, and section 3894 provides that the jury may give such damages, pecuniary and exemplary, as they shall deem just and fair. Held that, while the jury has discretion to grant exemplary damages in such an

action, it should be permitted to award them only when the injury is proved to have occurred under circumstances indicating fraud, malice, oppression, intentional wrong, wantonness, or a degree of recklessness amounting to indifference to the rights and welfare of others. *Id.*

DEATH OF DEVISEE

See Wills, 9.

DEATH OF PARTY

See Abatement and Revival, 1, 2.

DEATH PENALTY

See Criminal Law, 64, 111.

DEBT

See Payment, 4.

DECEASED PERSONS

See Witnesses, 4.

DECEDENT

See Criminal Law, 39.

DECLARATION

See Homestead, 3.

DECLARATION OF HOMESTEAD

See Homestead, 2.

DECLARATIVE LIMITATION OF LEGISLATIVE POWER

See Constitutional Law, 10.

DEDICATION

I. **NATURE AND REQUISITES.**

1. Nature and essentials.

2. Designation in maps or plats, and sale of lots.

3. Revocation or lapse of dedication before acceptance.

4. Necessity of acceptance.

II. **OPERATION AND EFFECT.**

5. Abandonment or nonuser.

6. Reversion.

I. NATURE AND REQUISITES

1. **Nature and essentials.**

A dedication of land for public purposes is simply a devotion of it, or an easement in it, to such purposes by the owner, manifested by some clear declaration of the fact. *Shearer v. City of Reno*, 36 Nev. 443; 136 P. 705.

2. **Designation in maps or plats, and sale of lots.**

By filing a plat as an addition to a town, and advertising and selling lots, the land shown on the map as streets, avenues, and

public parks became dedicated for those purposes. *Id.*

3. Revocation or lapse of dedication before acceptance.

An acceptance completes the transfer of the property or the easement in it from the owner to the public, and, where there is nothing beyond the owner's declaration without acceptance by the public, the dedication may be revoked at the owner's pleasure. *Id.*

If nothing beyond a declaration is made, and no interest in the property is acquired by third persons, a dedication of property may be recalled at the pleasure of the owner; but, where contracts for a valuable consideration are made upon the supposed appropriation of the property to the uses indicated, the dedication becomes irrevocable, such contract estopping the owner from asserting any interest except in common with purchasers from him. *Id.*

The irrevocable character of a dedication, after sales made with reference thereto and induced thereby, is not affected because the property is not at once subjected to the uses designed. *Id.*

4. Necessity of acceptance.

Formal acceptance of a dedication by the public authorities is not necessary to complete the dedication and preclude the original owner from revoking it, although the formal acceptance by the public authorities may be necessary to impose upon them the duty of protecting the property, and keeping it in a condition to meet the uses intended. *Id.*

II. OPERATION AND EFFECT

5. Abandonment or nonuser.

Notwithstanding the city council might be bound by its order on petition of the property owners, changing the northerly boundary line of an avenue, such order in no way added anything to the alleged title of an intruder upon the land formerly included within and dedicated as the avenue. *Id.*

Where the owner of land dedicated part of it as an avenue by filing a map as an addition to a town, and by selling lots with reference thereto, a mere intruder upon land originally within the boundaries of an avenue who fenced and built thereon acquired no rights as against the public. *Shearer v. City of Reno*, 36 Nev. 444; 136 P. 705.

6. Reversion.

Where city authorities close an avenue dedicated as such, or release it from the public easement, the right to it reverts to the dedicator's estate, and not to an intruder thereon. *Id.*

DEED ABSOLUTE IN FORM

See Mortgages, 1.

DEED OF CONVEYANCE

See Homestead, 3.

DEEDS

III. CONSTRUCTION AND OPERATION.

(A) General Rules of Construction.

1. Extrinsic circumstances.
2. Construction by parties.

(B) Property Conveyed.

3. Construction.
4. Particular description.

III. CONSTRUCTION AND OPERATION

(A) GENERAL RULES OF CONSTRUCTION

1. Extrinsic circumstances.

Where a deed is ambiguous, the court will generally consider the position of the parties and the circumstances, and interpret the language in the light thereof. *Coppermines Co. v. Comins*, 38 Nev. 359; 148 P. 349.

2. Construction by parties.

In suit to quiet title against a defendant who sought reformation of his deed to comply with plaintiff's agreement to convey, alleged in the answer, where the parties themselves had construed an ambiguous provision of the agreement, the trial court properly refused to sustain the defendant's contention contrary thereto. *Carey v. Clark*, 40 Nev. 151; 161 P. 713.

(B) PROPERTY CONVEYED

3. Construction.

In the construction of deeds, explanatory clauses and descriptive terms must be given weight, and, while they may go to the extent of passing title, yet before such effect should be given to them it should appear from the deed beyond all reasonable doubt that it was the intent of the parties to give them such significance. *Coppermines Co. v. Comins*, 38 Nev. 359; 148 P. 349.

4. Particular description.

Where a grantor conveys land by metes and bounds, the circumstances must be very strong to prove that he meant to convey any other lands than those described. *Id.*

A deed described the land conveyed as commonly called the "Comins Ranch" and by the government subdivisions. Fences were beyond the government subdivisions and so constructed as to clearly show that they did not follow the lines of government subdivisions. The abstract of title was limited to the government subdivisions, and the land between the government subdivisions and the fences was not assessed in the name of the grantee. Held, that the land conveyed was only the land described by government subdivisions. *Coppermines Co. v. Comins*, 38 Nev. 359, 360; 148 P. 349.

Under the rule that the particular description in a deed controls as against a general description, a particular description, setting forth the legal subdivisions, limits and defines the grant as against a general description denominating the estate conveyed as a designated ranch. *Coppermines Co. v. Comins*, 38 Nev. 359; 148 P. 349.

See Adverse Possession, 2; Mines and Minerals, 21.

DE FACTO OFFICER

See Elections, 9.

DEFAULT

See Appeal and Error, 52; Divorce, 6, 15, 16, 17; Judgment, 4, 5, 6, 9, 10; Justice of the Peace, 9.

DEFAULT JUDGMENT

See Appeal and Error, 92, 96.

DEFECT

See Indictment and Information, 9.

DEFECTIVE COUPLER

See Master and Servant, 12, 20.

DEFECTS IN NOTICE OF APPEAL

See Appeal and Error, 52.

DEFECTS IN PROCEEDINGS

See Appeal and Error, 50, 71.

DEFENDANT

See Quieting Title, 2.

DEFENDANTS RESIDING OUTSIDE OF STATE

See Process, 5.

DEFENDANT'S THEORY

See Trial, 16, 21.

DEFENSE OF LACHES

See Pleading, 15.

DEFENSES

See Landlord and Tenant, 2, 9; Master and Servant, 36.

DEFINING OFFENSES

See Criminal Law, 1.

DEGREE OF PROOF

See Mortgages, 2.

DEGREES

See Libel and Slander, 11, 13.

DELAY

See Appeal and Error, 72.

DELAY IN TAKING APPEAL

See Appeal and Error, 28.

DELAY SHORT OF PERIOD OF LIMITATIONS

See Equity, 5.

DELEGATION OF POWER

See Taxation, 10.

DELEGATION OF POWER TO JUDICIARY

See Constitutional Law, 22.

DELIVERY

See Sales, 6, 7.

DEMURRER

See Appeal and Error, 64, 85; Pleading, 2, 16, 17, 23.

DEMURRER IN JUDGMENT ROLL

See Appeal and Error, 94.

DEMURRER ON GROUND OF LACHES

See Pleading, 15.

DEMURRER TO ENTIRE PLEA OR ANSWER

See Pleading, 16.

DEMURRER TO PETITION FOR MANDAMUS

See Mandamus, 19.

DEMURRER TO WHOLE PLEADING PARTIALLY GOOD

See Pleading, 16.

DENIAL OF AFFIRMATIVE ANSWER

See Pleading, 13.

DENIAL OF CONTINUANCE

See Appeal and Error, 6.

DENIAL OF NEW TRIAL

See Appeal and Error, 49.

DEPOSITIONS

1. Examination of witness—Annexing exhibits.
2. Punishment of witness refusing to attend or testify.
3. Defects in objections—Right to object.
4. Time for objection.
1. Examination of witness—Annexing exhibits.
Rev. St. sec. 869 (U. S. Comp. St. 1901. p.

635), provides for the taking of a deposition of a witness in a federal district or territory other than that in which the suit is pending, declaring that if the witness after being served with subpoena fails to produce to the commissioner any paper, writing, written instrument, book, or other document being in his possession or power and described in the subpoena requiring such production, and such failure is proved to the satisfaction of the judge, he may proceed to enforce obedience of the subpoena or punish the disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by the court, and that when any such paper, writing, etc., is produced to the commissioner, he shall at the cost of the party requiring the same cause to be made a correct copy thereof, or of so much thereof as may be required by either of the parties. Held, that such section exclusively defined the limitations of the powers of the commissioner appointed to take depositions in a federal district other than that in which the suit was pending, and hence, while the witness was bound to sign the deposition when completed, he was not required to surrender possession of a draft and letters of instruction concerning which the suit was brought, so that the original might be attached to the deposition; the party taking the deposition being at most only entitled to certified copies thereof. *Smith v. National Bank*, 193 F. 255.

2. Punishment of witness refusing to attend or testify.

Where plaintiff, in giving his deposition, refused under advice and command of his counsel to answer certain questions until the court had ruled that they should and must be answered, his refusal was not contumacious, nor was he a recalcitrant witness, and it was error, before ruling that the questions must be answered, to strike his complaint. *Roberson v. Kilborn*, 40 Nev. 423; 165 P. 220.

Conceding questions propounded in taking a deposition were legal and pertinent, it was an arbitrary exercise of authority to enter judgment against defendant before giving him an opportunity to answer the questions propounded and ruled to be proper. *Id.*

3. Defects in objections—Right to object.

Where testimony legally objectionable in substance was elicited from the plaintiff on cross-examination by his attorneys in his deposition taken by defendants, and the deposition was read in evidence by plaintiff as provided for by Comp. Laws, 3504, thereby making the deposition plaintiff's own evidence under the provision to that effect of section 3505, an objection made by defendants on the trial to the admission of such objectionable testimony should have been sustained, though the deposition was taken on defendant's motion, since, under a further provision of section 3504, the evidence taken in a deposition is subject to all

legal exceptions. *McLeod v. Miller & Lux*, 40 Nev. 448; 153 P. 566; 167 P. 27.

4. Time for objection.

The objection to such substantially inadmissible evidence was properly made at the trial instead of at the taking of the deposition, under the provisions of Comp. Laws, 3504, that depositions may be used upon the trial subject to all legal exceptions. *Id.*

See Appeal and Error, 62.

DEPOSITS

See Banks and Banking, 4, 8, 9.

DEPUTY MINERAL SURVEYORS

See Mines and Minerals, 15, 16, 17.

DEPUTY SUPERINTENDENTS OF PUBLIC INSTRUCTION

See Schools and School Districts, 1.

DEROGATION OF COMMON LAW

See Process, 4.

DESCENT AND DISTRIBUTION

1. Property vests in heirs, when.
2. Courts.

III. RIGHTS AND LIABILITIES OF HEIRS AND DISTRIBUTEES.

(A) Nature and Establishment of Right.

3. Title of heirs or distributees—Real property and interest therein.
4. Actions relating to real property or interests therein.

1. Property vests in heirs, when.

Property vests in the heirs of the decedent dying intestate, immediately upon the death of such decedent. *Winters v. Winters*, 34 Nev. 324; 123 P. 17, 1135.

2. Courts.

The district court has the power to determine an action between the heirs of a decedent dying intestate where the estate of such decedent has never been administered upon. *Id.*

III. RIGHTS AND LIABILITIES OF HEIRS AND DISTRIBUTEES

(A) NATURE AND ESTABLISHMENT OF RIGHT

3. Title of heirs or distributees—Real property and interest therein.

Under the statutory provisions and procedure relative to the estates of decedents, the title to real estate vests in the heirs and devisees at the moment of the death of the testator or intestate, subject only to the right of possession of the executor or administrator under Rev. Laws, 5950, for the payment of the debts and expenses of administration, with the right in the administrator to possession until the estate is settled or delivered over to the parties

entitled by the order of the probate court. *Wren v. Dixon*, 40 Nev. 172; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

4. Actions relating to real property or interests therein.

Where an administrator or executor has been appointed, and the estate is in the course of probate, it is the right of the heirs to maintain an action as against third persons for the possession of the realty. *Id.*

See Husband and Wife, 7.

DESCRIPTION

See Mines and Minerals, 21.

DESCRIPTION IN DEED

See Waters and Watercourses, 13.

DESCRIPTION IN LEASE

See Evidence, 16, 17.

DESCRIPTION OF PROPERTY

See Taxation, 12; Vendor and Purchaser, 1.

DESERTION

See Divorce, 2.

"DESERTION"

See Divorce, 12.

DESERTION OF CHILD

See Criminal Law, 6.

DESIGNATION OF LEGATEES

See Charities, 3.

DESTRUCTION OF CANALS

See Waters and Watercourses, 18.

DETAINDER

See Landlord and Tenant, 10.

DETERMINATION OF WATER RIGHTS

See Constitutional Law, 42.

DETERMINATION OF WATER RIGHTS BY STATE ENGINEER

See Constitutional Law, 20; Waters and Watercourses, 7.

"DEVISE"

See Wills, 6, 9.

DIFFERENT CAUSE OF ACTION

See Judgment, 34.

DIFFERENT THEORIES OF CASE

See Trial, 16.

DILIGENCE

See Equity, 2.

DIMINUTION OF THE RECORD

See Appeal and Error, 59.

DIRECT EVIDENCE

See Habeas Corpus, 15.

DISBARMENT

See Attorney and Client, 2, 3.

DISCHARGE

See Habeas Corpus, 7, 16.

DISCRETION

See Mandamus, 2, 7.

DISCRETION OF COURT ON CROSS-EXAMINATION

See Criminal Law, 103.

DISCRETION OF TRIAL COURT

See Depositions, 2; Partnership, 4.

DISCRETIONARY ORDERS

See Appeal and Error, 95.

DISMISSAL

See Appeal and Error, 4, 30, 70, 72, 93; Courts, 8; Criminal Law, 100; Divorce, 1, 4, 10; Judgment, 25; Motions, 2.

DISMISSAL AND NONSUIT

II. INVOLUNTARY.

1. Want of prosecution.
2. Motion to dismiss—Affidavits and other proofs.
3. Order.

II. INVOLUNTARY

1. Want of prosecution.

At common law the essential of a nonsuit was abandonment of the cause by the plaintiff. *Danforth v. Danforth*, 40 Nev. 435; 166 P. 927.

Where a complaint was filed April 9, 1904, defendants brought and filed demurrers May 20, 1904, and nothing more was done in the case until June, 1913, judgment dismissing the suit for want of prosecution, plaintiff making no offer to show excusable neglect, was not an abuse of discretion on the part of the trial court. *Raine v. Ennor*, 39 Nev. 365; 158 P. 133.

The fact that plaintiff obtained an injunction in his suit against defendants is of no importance on appeal from a judgment dismissing the suit for want of prosecution, since the obtaining of an injunction is not a move in the prosecution of a suit tending to bring it to issue or trial. *Id.*

2. Motion to dismiss—Affidavits and other proofs.

When a motion to dismiss for want of prosecution is made in a case in which no step has been taken by plaintiff for several years, the duty rests upon him to excuse his neglect. *Id.*

3. Order.

A judgment apparently on the merits dismissing the libel will not be considered one of nonsuit on motion of defendant, as authorized by Rev. Laws, 5237, subd. 5; it not appearing defendant made any such motion. *Danforth v. Danforth*, 40 Nev. 435; 106 P. 927.

See Judgment, 13.

DISMISSAL OF ACTION

See Appeal and Error, 16, 22, 91, 113; Waters and Watercourses, 13.

DISMISSAL OF APPEAL

See Appeal and Error, 34, 50, 71, 73, 76.

DISMISSAL OF INDICTMENT

See Criminal Law, 13.

**DISPOSITION OF CASE BY
SUPREME COURT**

See Appeal and Error, 127.

**DISPOSITION OF MONEY FROM
LICENSES**

See Intoxicating Liquors, 3.

DISPOSITION OF PROPERTY

See Divorce, 22, 23.

DISPOSITION OF TAXES

See Taxation, 21.

DISPUTING LANDLORD'S TITLE

See Landlord and Tenant, 2.

DISQUALIFICATION OF JURORS

See Grand Jury, 4.

DISSOLUTION OF ATTACHMENT

See Appeal and Error, 42; Bankruptcy, 7.

DISTRIBUTION OF ESTATE

See Executors and Administrators, 8.

DISTRIBUTION OF WATER

See Waters and Watercourses, 7.

DISTRICT ATTORNEYS

See Criminal Law, 63.

DISTRICT COURT

See Criminal Law, 108; Descent and Distribution, 2; Justices of the Peace, 2, 8, 11; Mandamus, 2, 8.

DISTRICT JUDGE

See Appeal and Error, 116; Judges, 1; Statutes, 32.

DIVERSITY OF CITIZENSHIP

See Removal of Causes, 4.

DIVISION LINE

See Boundaries, 2.

DIVISION OF PROPERTY

See Divorce, 30.

DIVORCE

I. NATURE AND FORM OF REMEDY.

1. Origin and nature of remedy.

II. GROUNDS.

2. Desertion or absence.

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V. ALIMONY, ALLOWANCES AND DISPOSITION OF PROPERTY.

21. Permanent alimony—Modification of judgment or decree.

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V. ALIMONY, ALLOWANCES AND DISPOSITION OF PROPERTY—Contd.

23. Disposition of property—Division of property.
24. Enforcement of order, judgment or decree—Dismissal—Striking out or stay on nonpayment.
25. Enforcement of order, judgment or decree—Contempt proceedings.
26. Appeal—Review.

VI. CUSTODY AND SUPPORT OF CHILDREN.

27. Modification of judgment, order or decree as to support.
28. Property not disposed of by judgment or decree.
29. Foreign divorces—Construction and operation.
30. Foreign divorces—Alimony and disposition of property.

I. NATURE AND FORM OF REMEDY

1. Origin and nature of remedy.

The right to a divorce is not a guaranteed privilege of the citizens, and the right to divorce is limited to the causes and subject to the requirements prescribed by state statute. *Worthington v. District Court*, 37 Nev. 214; 142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696.

II. GROUNDS

2. Desertion or absence.

Separation by consent of the parties is not "desertion," and will not be ground for divorce. *Albee v. Albee*, 38 Nev. 191; 147 P. 452.

When the husband gives up the domicile at one place and establishes another, and in good faith urges the wife to live with him there, her refusal to accept the invitation, if without sufficient reason, amounts to "desertion." *Roberson v. Roberson*, 41 Nev. 276; 169 P. 333.

IV. JURISDICTION, PROCEEDINGS, AND RELIEF

(A) JURISDICTION, VENUE, AND LIMITATIONS

3. Courts invested with jurisdiction.

The courts have no inherent power to grant a divorce; but such power must be conferred by statute. *Worthington v. District Court*, 37 Nev. 214; 142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696.

4. Domicile or residence of parties.

The courts of a state have no jurisdiction to grant a divorce, unless at least one of the parties has a domicile in the state, and the appearance of a nonresident defendant will not invest the court with jurisdiction of a suit brought by a person who has no bona-fide domicile in the state. *Id.*

A wife, having a cause of action for divorce, has a right to change her domicile from that of her husband, and, where the complaint states a cause of action, it will be assumed that the domicile of the wife is identical with that of her residence. *Tiedemann v. Tiedemann*, 36 Nev. 404; 137 P. 824.

Under the provisions of section 22 of the marriage and divorce act (Rev. Laws, 5838) a six-months' residence is essential only when the plaintiff relies alone on his or her residence. The act defining what shall constitute legal residence (Rev. Laws, 3609) only affects the character of residence where a residence is essential to jurisdiction. *Id.*

While it may be essential that one of the parties to the action for divorce must be a resident of the state, it does not follow that residence for any particular length of time is in every case essential. By statute a nonresident plaintiff may have a right of action against a resident defendant. *Id.*

Where neither of the parties have a residence or domicile within the state and one of the parties takes up a temporary abode for the purpose of procuring a divorce, and thereafter the other party, in collusion with the plaintiff, enters the state for the purpose of permitting service in the action, jurisdiction may not thus be conferred. *Id.*

There is no legal inhibition to the legislature giving to a resident plaintiff a right of action for divorce and in establishing jurisdiction over the subject-matter in the county where the defendant may be found. *Id.*

Under section 22 of the marriage and divorce act (Rev. Laws, 5838) providing that "Divorce from the bonds of matrimony may be obtained by complaint, under oath, to the district court of the county * * * in which defendant shall reside or be found," etc., a complaint alleging that the plaintiff is a resident of a certain county within this state and that the defendant "is now within and can be found in said county" alleges facts sufficient to invest the court with jurisdiction. (*Fleming v. Fleming*, 36 Nev. 135, distinguished.) *Id.*

Actual living in the county by plaintiff for the six months is necessary to give the court jurisdiction under Rev. Laws, 5838, providing that divorce may be obtained by complaint to the district court of the county in which plaintiff shall have "resided" six months before suit brought. "Resided" means permanency as well as continuity. Actual residence is the place of actual abode; of physical presence—the abiding-place. Legal residence may be merely ideal, but actual residence must be substantial. Where residence is made the basis of jurisdiction, parties who seek to invoke the power of the court to relieve them from the marriage tie must bring themselves clearly and affirmatively within the jurisdiction of the court. *Fleming v. Fleming*, 36 Nev. 135; 134 P. 445.

Under civil practice act, sec. 252 (Rev. Laws, 5194), providing that when the defendant interposes a counterclaim, his right to a provisional remedy is the same as though he were plaintiff, section 259 (Rev. Laws, 5201), providing that either party may, in the absence of the other,

bring a cause to trial and proceed to judgment, and section 295 (Rev. Laws, 5237), providing that an action may be dismissed or a judgment of nonsuit entered when the plaintiff fails to appear on the trial or abandons the cause, in which case judgment shall be rendered upon the merits, where plaintiff, in an action for divorce, failed to appear at the trial, defendant, who had filed a cross-complaint for divorce and injunction, was entitled to proceed to judgment for the full relief asked in the cross-complaint, though plaintiff alone had acquired the requisite residence within the state for the maintenance of an action for divorce. *State v. Moran*, 37 Nev. 404; 142 P. 534.

The provisions of the act of February 20, 1913 (Stats. 1913, c. 10) amending section 22 of the marriage and divorce act of 1861 (Stats. 1861, c. 33), as amended by the act of February 15, 1875 (Stats. 1875, c. 22), by declaring that the court shall not grant a divorce, unless either party shall have been a resident for not less than one year, relates merely to procedure, and not to cause of action, and applies to cases where the cause of action accrued before the act took effect. *Worthington v. District Court*, 37 Nev. 214; 142 P. 230; *Ann. Cas.* 1916E, 1097; *L. R. A.* 1916A, 696.

The word "found," as used in section 22 of the divorce act, supra, is used in the same sense that it is used in other provisions of the civil practice act relative to the service of process, and means the county in which service of summons may be had personally upon the defendant. *Tiedemann v. Tiedemann*, 36 Nev. 494; 137 P. 824.

Under Rev. Laws, 5838, providing that divorce may be obtained by complaint under oath to the district court of the county in which the cause shall have accrued, or in which defendant shall reside or be found, or in which plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which plaintiff shall have resided six months before suit, for wilful desertion for a year, or for extreme cruelty, a district court had jurisdiction to grant divorce for extreme cruelty and desertion to a husband resident in the county for a year, though the acts complained of all occurred in another state, under whose statutes there was no cause of action for divorce on those grounds, since the law of the forum controls; it being the legislative intent that the district court have jurisdiction to determine the marriage status of parties whose residential qualifications meet the requirements of the statute, regardless of where the cause of action may have arisen; marriage, though a civil contract, constituting an exception to the rule of *lex loci contractus*. *Blakeslee v. Blakeslee*, 41 Nev. 235; 168 P. 950.

A complaint in divorce alleging plaintiff's residence in W. county, that defendant is within the jurisdiction of the court and can be served in W. county, gives the court

jurisdiction under act of February 23, 1915 (Stats. 1915, c. 28), section 1, amending Stats. 1861, c. 33, sec. 22, giving jurisdiction if defendant can be found in the county. *Merritt v. Merritt*, 40 Nev. 385; 160 P. 22; 164 P. 644.

5. Acquisition of domicile for purpose of divorce.

The action was for divorce; defendant denying the jurisdictional allegation of the complaint of the plaintiff's residence for the statutory period of six months prior to the suit brought. Upon trial to a jury, special findings were made that plaintiff had established her residence solely for the purpose of obtaining a divorce. Rev. Laws, 5838, provides that divorce from the bonds of matrimony may be obtained, etc., in the county in which the plaintiff shall have resided six months before suit brought; while section 3610 provides that the "legal residence" of a person, with reference to his right of suffrage and eligibility to office, is that place where his habitation is fixed and permanent, and to which, whenever he is absent, he has the intention of returning. Stats. 1911, c. 158, provides that the "legal residence" of a person "with reference to his or her * * * right to maintain or defend any suit at law or in equity" is that place where he or she shall have been actually, physically, and corporeally present within the state or county during all of the period for which residence is claimed by him or her. Held, that there is no necessary repugnancy between the provisions of the Revised Laws relating to residence and the act of 1911; the latter merely adding the requirement of physical presence to the former general requirement of the intention permanently to reside, so that the plaintiff, taking up her residence solely for the purpose of maintaining a divorce action, did not acquire such residence as was necessary to give the court jurisdiction of her suit. *Presson v. Presson*, 38 Nev. 203; 147 P. 1081.

(B) PARTIES, PROCESS AND INCIDENTAL PROCEEDINGS

6. Process or notice—Substituted service.

The order for substituted service directing the mailing of a copy of the summons to defendant at two addresses, mailing it addressed to her at one of those places, and instead of the other, at a third place, not being a full compliance with the order, does not give court jurisdiction. *Miller v. Miller*, 37 Nev. 257; 142 P. 218.

7. Process or notice—Service by publication.

Affidavit, in husband's divorce action, that wife's address was unknown to him, and that, after due diligence, she could not be found in state, so that summons could not be served upon her there, did not contain statement of facts contemplated by Rev. Laws, 5026, authorizing service by publication. *Perry v. District Court*, 42 Nev. 284; 174 P. 1058.

Where husband suing for divorce knew

wife was nonresident when he filed affidavit for order of publication, wherein he did not say she was or was not, or that he did not know her residence, court, in view of Rev. Laws, 5027, acquired no jurisdiction to order publication of summons and decree. *Id.*

(C) PLEADING

8. Complaint—Residence of parties.

Under Stats. 1915, c. 28, sec. 1, providing that divorce may be obtained by complaint to the court of the county in which the cause therefor accrued, or in which defendant shall reside or be found, or in which plaintiff resides, if the parties last cohabited there, or in which plaintiff shall have resided for six months, the complaint of a husband, not alleging his residence in the county, but merely that he is now therein, does not bring his status within the jurisdiction of the court, the matrimonial domicile of the parties being in another state, and the marital offenses complained of being such as might have been determined by the courts of the matrimonial domicile, though the complaint alleges that defendant can be found in and is a resident of the county, the right of the wife to acquire another domicile separate from him, where their unity is dissolved, not availing him. *Aspinwall v. Aspinwall*, 40 Nev. 55; 160 P. 253.

9. Complaint—Grounds for divorce.

A husband's complaint alleging the wife's persistent gross uncleanness, both as to her person and in the performance of her household duties, her vituperation of him upon his remonstrance with her, because of her conduct, that against his protest, she persistently exposed her person to the view of neighbors and to men servants in a manner grossly immodest, if not indecent, and used profane and vulgar language and told vulgar, obscene, and licentious stories in the presence of the children, so that he felt compelled to remove his daughter from her influence, and deprive himself of her society, to give her an opportunity to properly develop her character, that such cruelty was inflicted daily, and frequently several times a day, and extended continuously through their married life, that it was wholly unprovoked, that it destroyed his happiness, wrecked his home life, impaired his health, and caused great and grievous mental worry and torment, that it was unendurable, and had turned his feeling for her into repulsion and disgust, and that he had ceased to live with her, sufficiently stated a cause of action for divorce upon the ground of extreme cruelty. *McAllister v. McAllister*, 37 Nev. 92; 139 P. 781.

(D) EVIDENCE

10. Admissibility—Residence of parties.

Defendant, in such case, was entitled to prove the residence of the plaintiff in order to support the jurisdiction of the court to proceed to judgment. *State v. Moran*, 37 Nev. 404; 142 P. 534.

11. Weight and sufficiency of evidence.

Evidence in a suit for divorce held sufficient to establish plaintiff's bona-fide residence within the state, though she admitted she was living at a hotel and owned no property within the state. *Merritt v. Merritt*, 40 Nev. 385; 160 P. 22; 164 P. 644.

12. Weight and sufficiency of evidence—Desertion or absence.

In suit by husband, who was first guilty of desertion, for divorce on the ground of desertion of the wife, evidence held insufficient to show that husband's invitation to the wife to come and live with him was made in good faith. *Roberson v. Roberson*, 41 Nev. 276; 169 P. 333.

(E) DISMISSAL, TRIAL OR HEARING AND NEW TRIAL

13. Questions for court and jury.

In a husband's divorce suit, the question of his residence was one of fact to be determined by the trial court. *Blakeslee v. Blakeslee*, 41 Nev. 235; 168 P. 950.

14. New trial or rehearing.

The fact that plaintiff moved from the state after the rendition of a judgment of divorce in his favor could not be considered as newly discovered evidence affecting the material issues in an action for divorce for cruelty. *Whise v. Whise*, 36 Nev. 16; 131 P. 967; 44 L. R. A. (N.S.) 689.

(F) JUDGMENT OR DECREE

15. Nature and essentials.

An answer in divorce is not necessary for a judgment on the merits against plaintiff. *Danforth v. Danforth*, 40 Nev. 436; 166 P. 927.

That affidavit of mailing of a copy of the summons to defendant in divorce, as required by the order for substituted service, was not filed when default was entered or when trial was had and the decree granted, should preclude granting of the decree; and a decree granted without affirmative proof of substantial compliance with an order for substituted service is, at least, voidable. *Miller v. Miller*, 37 Nev. 257; 142 P. 218.

If wife, in husband's divorce action, was not served with summons, decree of divorce was void ab initio for lack of jurisdiction in court to enter it. *Perry v. District Court*, 42 Nev. 284; 174 P. 1058.

16. By default—Opening or setting aside.

Even if copies of the summons and complaint were mailed defendant, as directed by the order for substituted process, yet her default can be set aside, if she moves to vacate it within six months of entry of the decree, and it is found that through no fault of hers she had failed to receive either such copies or notice of pendency of the action. *Miller v. Miller*, 37 Nev. 258; 142 P. 218.

Plaintiff in divorce may not complain that defendant did not sooner, after filing her motion to open the default and set aside the decree, bring it on for hearing, she having

done so at the first opportunity at which the regular judge, who granted and signed the decree, was present, though, at his request, a judge of another district had been sitting. *Id.*

Aside from the question of fraud, the affidavit of mailing, disclosing that the copies of the summons and complaint, if mailed at all, were mailed to defendant at a different address from that directed by the order for substituted process, warrants the granting of an order vacating the default. *Miller v. Miller*, 37 Nev. 257; 142 P. 218.

17. Opening or vacating.

That since the decree of divorce granted plaintiff he has remarried is no ground for refusing to set aside the decree, if it was obtained through fraud on the court and defendant. *Id.*

The court, on application to vacate a divorce decree on the ground of fraud, may not grant relief based on a private letter addressed to him and the contents of which are unknown to the opposing party or his counsel until it is filed as a basis of the order, and the court, if deeming the matters stated in the letter of sufficient importance, should direct counsel of the parties to investigate the same and present the matter by affidavits. *Blundin v. Blundin*, 38 Nev. 212; 147 P. 1083.

In a suit to set aside a divorce decree, a complaint alleging that the decree was void, because plaintiff therein was not a bona-fide resident of the county wherein the decree was granted, was insufficient, since under Stats. 1915, c. 28, relating to jurisdiction of divorce actions, jurisdiction might have been obtained on another ground than that of the residence of the plaintiff, and it was not alleged that jurisdiction was not dependent on such other grounds. *Wade v. Wade*, 41 Nev. 533; 173 P. 553.

In a suit to set aside a decree of divorce, on the ground that it was obtained by a conspiracy between plaintiff's husband and her attorney, a complaint, alleging such conspiracy by way of conclusion merely, and failing to set out facts showing that by reason of such conspiracy the plaintiff was prevented from making her defense, is insufficient. *Id.*

(G) APPEAL

18. Nature and form of remedy.

The question raised by the defendant in divorce as to the sufficiency of the evidence to establish residence on the part of the complainant can be reviewed only by appeal, and not by original proceedings in the supreme court, seeking to obtain an order requiring the judge of the trial court to show cause why defendant in the divorce should not be permitted to file his plea in abatement. *McKim v. District Court*, 33 Nev. 44; 110 P. 4.

19. Effect of appeal.

On the husband's appeal from a judgment

of divorce, where it appeared that he was a man of considerable means, that all of his property was outside the state, and that after trial and before judgment he left the state and cannot be located by respondent, who is without means, an order requiring appellant to pay a sufficient sum to compensate respondent's attorney for appearing in her behalf will be made. *Buehler v. Buehler*, 38 Nev. 500; 151 P. 44.

On the appeal of a divorce action, the appellate court has power to make an allowance of suit money to the wife for the purpose of appeal. *Id.*

20. Review.

Whether fraud was committed on the court, whereby a decree of divorce was obtained, is a question of fact for the determination of the trial court, on motion to vacate, from all the evidence; and its determination, on a substantial conflict in the evidence, cannot be disturbed on appeal. *Miller v. Miller*, 37 Nev. 258; 142 P. 218.

V. ALIMONY, ALLOWANCES AND DISPOSITION OF PROPERTY

21. Permanent alimony—Modification of judgment or decree.

A decree of divorce a vinculo matrimonii is final, and the jurisdiction of the court over the parties after the expiration of the term is at an end, and as there can be no grant of alimony after such a divorce, there can be no change in the award of alimony, unless the right is reserved in the decree or given by statute. *Sweeney v. Sweeney*, 42 Nev. 431; 179 P. 638.

22. Disposition of property—Rights.

The power of the court given by Rev. Laws, 5841, to make such disposition of the property of the parties as shall appear just and equitable in granting a decree of divorce, is limited by Const. art. 4, sec. 31, Stats. 1864-65, c. 76, and Stats. 1873, c. 119, determining the property rights of husband and wife. *Walker v. Walker*, 41 Nev. 4; 164 P. 653.

Where a husband whose wife was granted a divorce for his misconduct had settled on her at the time of the marriage property of the value previously agreed on, which had in the meantime enormously increased in value, and which left the husband without property of his own, the court can, under the power to dispose of the property as shall appear just and equitable given by Rev. Laws, 5841, protect any equity of the husband in such property notwithstanding his guilt, which is only one of the factors to be considered in determining the property rights. *Id.*

The declaration of Rev. Laws, 2172, that neither husband nor wife has any interest in the property of the other, is subject to the exceptions of section 2173, allowing either to enter into any contract with the other subject to the general rules which control the actions of parties occupying

relations of confidence and trust towards each other, and under the latter provision, one spouse may acquire an interest, legal or equitable, in the separate property of other which the court, in granting a divorce, can protect under section 5841. *Id.*

23. Disposition of property—Division of property.

Rev. Laws, 2166, determines the rights of the parties to the community property on dissolution of the marriage, though the earlier statute, section 5941, empowering the court to dispose of the property on granting a divorce, has not been amended or repealed in terms. *Id.*

24. Enforcement of order, judgment or decree—Dismissal—Striking out or stay on nonpayment.

On the appeal of a divorce action, the appellant cannot be required, under penalty of dismissal of the appeal on refusal, to pay amounts awarded respondent in the judgment appealed from, since to compel appellant to pay such amounts would be to nullify the purpose of the appeal. *Buehler v. Buehler*, 38 Nev. 500; 151 P. 44.

On appeal from a judgment of divorce, attorney's fees pending the appeal may be ordered to be paid by appellant within a specified time on penalty of dismissal of the appeal. *Id.*

25. Enforcement of order, judgment or decree—Contempt proceedings.

On order to show cause why defendant should not be punished as for contempt for failure to pay alimony, an order directing him to pay certain alimony, which was futile as a process either for the enforcement of the original order or for the execution of its own mandate, will not be vacated, even though the court did not have jurisdiction in first place to award alimony. *Phillips v. Phillips*, 42 Nev. 460; 180 P. 907.

26. Appeal—Review.

Whether or not a divorced husband is able to pay alimony is a matter left entirely with the lower court. *Id.*

VI. CUSTODY AND SUPPORT OF CHILDREN

27. Modification of judgment, order or decree as to support.

Final judgment of divorce providing for support of children of marriage cannot, after term, when court has lost jurisdiction of parties, be changed as to such provisions, unless right is reserved by the decree or given by statute. *Sweeney v. Sweeney*, 42 Nev. 432; 179 P. 638.

28. Property not disposed of by judgment or decree.

Under Const., art. 4, sec. 31, Stats. 1864-65, c. 76, and Stats. 1873, c. 119, fixing the property rights of husband and wife, the dissolution of the marriage does not of itself operate to change the property rights. *Walker v. Walker*, 41 Nev. 4; 164 P. 653.

29. Foreign divorces—Construction and operation.

In a suit instituted in a foreign state other than the state of her husband's residence and in which he had no property, a wife secured a decree of divorce. Held, that such decree, though treated as one in rem, dissolving the bonds of matrimony, has no binding effect in personam against the defendant husband, though he was personally served with process in the state of his residence, for such service did not bring him within the jurisdiction of the foreign court. *Keenan v. Keenan*, 40 Nev. 351; 164 P. 351.

30. Foreign divorces—Alimony and disposition of property.

Where a wife procured a judgment of divorce in a foreign state other than Nevada, of which her husband was a resident, she cannot, on the ground of the liberality of the Nevada divorce laws, maintain an action for the division of community property situated in Nevada, for she might properly have maintained her suit in Nevada. *Keenan v. Keenan*, 40 Nev. 352; 164 P. 351.

Rev. Laws, 2166, declares that in case of the dissolution of the marriage the community property must be equally divided between the parties, and the court granting the decree must make such division as the nature of the case may require, provided that when the decree is rendered, on the ground of adultery or extreme cruelty, the party found guilty is entitled only to such portion of the community property as the court granting the decree may, in its discretion, deem just and allow. A wife secured in a foreign state a decree divorcing her from her husband, who was a resident of the State of Nevada, in which state the community property of the parties was situated. Held, that she could not thereafter maintain an independent action in the Nevada courts to secure a division of the community property pursuant to the statute; the statute having reference only to the court granting the divorce. *Keenan v. Keenan*, 40 Nev. 351; 104 P. 351.

See Judgment, 34; Pleading, 6, 9.

DIVORCE DECREE

See Stipulations, 1.

DIVORCE SUIT

See Insane Persons, 2.

DOMESTIC RELATIONS

See Habeas Corpus, 10, 14.

DOMICILE

1. Domicile distinguished from residence.
2. Domicile of origin.
3. Domicile of choice and change of domicile.
4. Domicile by operation of law.

1. Domicile distinguished from residence.

"Residence" is a settled or fixed abode of a character indicating permanency, or at least an intention to remain for an indefinite time, being made up of the physical fact of abode and the intention of remaining. *Presson v. Presson*, 38 Nev. 203; 147 P. 1081.

2. Domicile of origin.

A wife may acquire and maintain a domicile separate from that of her husband. *Merritt v. Merritt*, 40 Nev. 385; 160 P. 22; 164 P. 644.

3. Domicile of choice and change of domicile.

Residence is a matter of intention. *Whise v. Whise*, 36 Nev. 16; 131 P. 967; 48 L. R. A. (N.S.) 689.

4. Domicile by operation of law.

At common law, it was a well-founded rule that a woman on her marriage lost her own domicile and acquired that of her husband. *Merritt v. Merritt*, 40 Nev. 385; 160 P. 22; 164 P. 644.

See Divorce, 2.

DRAWING OF JURY

See Grand Jury, 3.

DRUMMERS AND SALESMEN

See Licenses, 4.

DUE PROCESS OF LAW

See Constitutional Law, 30, 40, 41, 42, 44, 45, 46; Intoxicating Liquors, 1.

DUTIES OF EXECUTORS AND ADMINISTRATORS

See Executors and Administrators, 11, 12.

DUTY AS TO DELIVERY

See Carriers, 4.

DUTY OF PERSONS ON TRACKS

See Railroads, 6.

DYING DECLARATIONS

See Criminal Law, 57, 73; Homicide, 17.

EASEMENTS**I. CREATION, EXISTENCE, AND TERMINATION.**

1. Prescription—Adverse character of use.

2. Evidence.

I. CREATION, EXISTENCE, AND TERMINATION**1. Prescription—Adverse character of use.**

No adverse right can exist in a way used by the owner of the land over which it passes. *Howard v. Wright*, 38 Nev. 25; 143 P. 1184.

Where not only the adjoining owner, but the owner of the land over which a way

was established, used the way, the act of the adjoining owner in constructing and maintaining bridges and in doing grading did not make his use adverse, so that it could ripen into an easement by prescription. *Id.*

Where a land owner opens and keeps open a road across his land for his own use, the fact that an adjoining owner makes use of the road under circumstances not interfering with the former's use creates no presumption that the latter's use of the road is adverse so that it can ripen into an easement by prescription. *Id.*

The act of the owners of land in leaving a gate across a way of which they themselves made use tended to rebut the presumption that the use of the way by an adjoining owner was adverse. *Id.*

Where the owner of premises uses a way, its enjoyment and use by another in common with the public generally must be regarded as being by permission and under an implied license, and not adverse, unless there be some decisive act on the part of that other to indicate a separate and exclusive use under claim of right. *Howard v. Wright*, 38 Nev. 26; 143 P. 1184.

2. Evidence.

Evidence in an action to enjoin defendants from trespassing on plaintiff's land held to show that defendant's use of the right of way claimed over such land was permissive, and hence could not ripen into an easement by prescription. *Howard v. Wright*, 38 Nev. 25; 143 P. 1184.

The presumption of a right arising from the unexplained use of a way across another's land for five years is negated by proof that claimant used the way in common with others. *Howard v. Wright*, 38 Nev. 26; 143 P. 1184.

EFFECT OF ADOPTION

See Adoption, 1.

EFFECT OF FRAUDULENT ACTS

See Executors and Administrators, 6.

EFFECT OF MARRIAGE

See Domicile, 4.

EFFECT OF RECEIPT FOR RENTS

See Landlord and Tenant, 3.

EFFECT OF RELEASE

See Attachment, 6.

EFFECT OF REPEAL OF STATUTE

See Municipal Corporations, 9.

EFFECT OF STIPULATION FOR ARBITRATION

See Arbitration and Award, 1.

EFFECT ON PROPERTY RIGHTS

See Divorce, 28.

EJECTION FROM DRAWING-ROOM

See Carriers, 20.

ELECTION CONTESTS

See Prohibition, 5.

ELECTION OF CAUSE OF ACTION

See Pleading, 3.

ELECTION OF REMEDIES

1. Causes of action and remedies subject to election.

1. Causes of action and remedies subject to election.

Where the agent of plaintiff wrongfully deposited money collected to the credit of the agent's account in a bank, and the bank, with knowledge of plaintiff's ownership, credited the money on the agent's debt to it, the plaintiff could either sue the bank in equity for an accounting or else treat the funds as converted, and sue for damages at law. *McStay Supply Co. v. Stoddard*, 35 Nev. 284; 132 P. 545.

See Estoppel, 2.

ELECTIONS

- I. RIGHT OF SUFFRAGE AND REGULATION THEREOF.

1. Statutory provisions—Constitutionality and validity.
2. Statutory provisions—Construction and operation.

- V. REGISTRATION OF VOTERS.

3. Constitutional and statutory provisions.
4. Correction of lists.

- VI. NOMINATIONS AND PRIMARY ELECTIONS.

5. Constitutional and statutory provisions.
6. Nomination by primary election.
7. Nomination by electors.
8. Acceptance, declination or withdrawal.
9. Nominations to fill vacancies.
10. Objection and contests—Trial and determination by courts.
11. Irregularities and defects.

- VII. BALLOTS.

12. Form and contents of ballots.
13. Form and contents of ballots—Party names.
14. Indication of choice by voter.
15. Irregularities, errors, and omissions.
16. Illegality—Distinguishing marks.

- IX. COUNT OF VOTES, RETURNS, AND CANVASS.

17. Constitutional and statutory provisions.

- IX. COUNT OF VOTES, RETURNS, AND CANVASS—Contd.

18. Canvass of returns—Recount of votes.

- X. CONTESTS.

19. Constitutional and statutory provisions.
20. Evidence—Admissibility.
21. Costs.

- XI. VIOLATION OF ELECTION LAWS.

22. Illegal expenditures and corrupt practices.

- I. RIGHT OF SUFFRAGE AND REGULATION THEREOF

1. Statutory provisions—Constitutionality and validity.

Stats. 1917, c. 197, providing for taking of votes of electors in the military service of the United States, is a compliance with Const. art. 2, sec. 3, and is not void for discrimination against electors in the naval service, or conscripted men in the military service, since "military service" includes every branch of service in either the army or the navy of the United States. *Maclean v. Brodigan*, 41 Nev. 468; 172 P. 375.

2. Statutory provisions—Construction and operation.

Election laws are to be liberally construed to enable the largest participation of qualified electors in all elections. *Turner v. Fogg*, 39 Nev. 406; 159 P. 56.

V. REGISTRATION OF VOTERS

3. Constitutional and statutory provisions.

Stats. 1915, c. 283, secs. 12 and 14, requiring electors to register their party affiliation as a prerequisite to the right to vote at primary election, is a reasonable regulation and valid exercise of the legislative power. *Id.*

As used in the election laws of 1913 (Stats. 1913, c. 284, subc. 3, sec. 18) providing that an elector shall not be entitled to vote at a primary election "unless he has heretofore designated to the registry agent his politics," the word "heretofore" relates to the time in which an elector may lawfully be registered for the primary election. *State v. Keith*, 37 Nev. 452; 142 P. 532; Ann. Cas. 1917A, 1276.

4. Correction of lists.

Under the election laws of 1913 (Stats. 1913, c. 284, subc. 3, sec. 18), relating to primary elections, and subchapter 2, secs. 4, 5, relating to registration, where an elector has registered, but has failed to indicate his politics or party designation, he may, prior to the time fixed for closing registration, apply to the registry agent and have an entry made on the registry of his politics or party designation so as to entitle him to vote at a primary election. *Id.*

Under the election laws of 1913 (Stats. 1913, c. 284, subc. 3, sec. 18), relating to primary elections, and subchapter 2, secs. 4, 5, relating to registration, an elector who has registered so as to be entitled to vote at a

primary election, by designating his political party and having same entered on the registry, cannot subsequently require the registry agent to change such designation. *Id.*

VI. NOMINATIONS AND PRIMARY ELECTIONS

5. Constitutional and statutory provisions.

The original primary election law (Stats. 1900, c. 198), sec. 2, which declared that the act should "not apply to special elections to fill vacancies to the nomination of party candidates for presidential electors," and that it should not be construed as affecting the right of political parties to hold conventions for the selection of delegates to national conventions, was amended by Stats. 1911, c. 165, to provide that the act should "not apply to special elections to fill vacancies to the nomination of party candidates for presidential electors," thus omitting the comma after the word "vacancies" shown in the original act. Section 27 of the original act provided that vacancies occurring after the holding of any primary election should be filled by the party committee of the city, county, or state, as the case might be. The omission of the comma must be regarded as the result of a clerical error, otherwise two methods of selecting candidates to fill vacancies in the office of presidential electors, and hence electors chosen by a convention of a political party were the only names entitled to go upon the official ballot. *State v. Brodigan*, 34 Nev. 486; 125 P. 609.

The primary law (Stats. 1908-09, c. 198), having made a radical change in the manner of making nominations for election, the provisions therein which preclude the withdrawal of a candidate after nomination supersede any provisions in earlier statutes permitting officers to resign, even if a candidate after nomination and before election were an officer within such former statutes. *State ex rel. Donnelly v. Hamilton*, 33 Nev. 418; 111 P. 1026.

6. Nomination by primary election.

One who files nomination papers under the election law of 1913 (Stats. 1913, c. 284), subc. 3, sec. 9, providing that the candidate filing such papers "shall pay" to the secretary of state "a fee for such filing," is not entitled to a return of such fee on his withdrawal as a candidate prior to the primary election, though such fee is required to be paid into the state treasury. *State v. Brodigan*, 37 Nev. 458; 142 P. 520.

Under election law of 1913 (Stats. 1913, c. 284), subc. 3, sec. 7, providing that a candidate at a primary election shall declare in his nomination papers that he intends to support the principles of the party of which he is a candidate, and that he voted for a majority of the candidates of such party at the last election, one who has filed nomination papers as a candidate of a designated party at the primary election cannot file another nomination paper designating himself as a candidate of another party for the same office. *Id.*

The primary election law (Stats. 1900, c.

198) provides in section 12, subd. 7, that under each group of names of candidates shall be printed as many blank spaces as there are to be candidates nominated for such office. Section 12, subd. 8, directs that at the bottom of the last column on a primary ballot there shall be left a space preceded by the words "county committeeman." Other sections of the act provide for the counting and certification of the vote for county committeeman, but the act nowhere provides for an elector's writing in of the names of candidates, and makes no provision for the certification of the vote cast by the writing in of names for candidates other than county committeeman. Held, that an elector may not vote for one whose name does not appear on the primary ballot by writing in his name and putting a cross thereafter, except in the case of a county committeeman. In *Re Primary Ballots*, 33 Nev. 125; 126 P. 643.

In spite of the provisions of primary election law (Stats. 1909, c. 198) par. 12, subd. 7, for blank spaces under the group of names of candidates, no such blank spaces need be left on the printed ballot either where there are candidates under a designated office, or where no candidates have filed therefor. *Id.*

Where, in such case, one of two opposing nominees withdrew after the time for filing nomination papers, but before the primary election, the other nominee became the candidate by operation of Stats. 1913, c. 284, subc. 3, sec. 14, subd. 9, and the secretary of state must certify his name as the candidate of his party, though he filed withdrawal papers before the primary election, but after the withdrawal of the other candidate for nomination. *State v. Brodigan*, 37 Nev. 458; 142 P. 520.

Election law of 1913 (Stats. 1913, c. 284), subc. 3, sec. 7, requiring a candidate filing nomination papers for the primary election to make affidavit that he will not withdraw, does not prevent a candidate who has filed his papers from withdrawing prior to the election, but he cannot withdraw where he is without opposition and becomes the nominated candidate by virtue of Stats. 1913, c. 284, subc. 3, sec. 14, subd. 9, providing that the names of candidates who are without opposition shall not be printed on the primary ballot, but shall be certified as the party nominees. *Id.*

Under Stats. 1915, c. 283, secs. 12 and 14, which was not repealed by Stats. 1915, c. 285, sec. 8, the names of electors which appear upon the certified registration list as copied from the register of the last general election, together with the names that appear on the supplemental list, constitute the list of electors qualified to vote at the primary election. *Turner v. Fogg*, 30 Nev. 406; 159 P. 56.

7. Nomination by electors.

Under the act of March 13, 1891 (Stats. 1891, p. 40, sec. 4; Rev. Laws, 1836), which provides for nomination of candidates for

public office by filing a certificate signed by electors, and under section 6 (Rev. Laws, 1838) which provides that no one shall join in nominating more than one nominee for each office to be filled, a certificate signed by the requisite number of electors is not vitiated by signers subsequently signing another certificate nominating another person for the same office, but duplicate signatures are invalid as to the subsequent certificate. *State v. Harmon*, 35 Nev. 189; 127 P. 221; Ann. Cas. 1914C, 891.

8. Acceptance, declination or withdrawal.

Under the primary act (Stats. 1908-09, c. 198, sec. 5, subd. 4) requiring each candidate on filing his nomination papers to make an affidavit, that if nominated he will accept the nomination and not withdraw, and that he will qualify as such officer, if nominated and elected, and section 24, providing that the person receiving the highest number of votes at a primary as the candidate for the nomination of a political party shall be placed on the official ballot, and section 27, providing that vacancies occurring after a primary shall be filled by the party committee, one nominated at a primary election as the candidate of a political party for a public office cannot have his name omitted from the general election ballot, though he has since the primary become incapacitated from making an active campaign. *State v. Hamilton*, 33 Nev. 418; 111 P. 1026.

A candidate nominated at a primary election for a public office is not an officer within the statute allowing officers to resign. *Id.*

The question whether a candidate nominated at a primary election may have his name omitted from the general election ballot is a matter of policy for the legislature, and, where the legislature forbids the withdrawal of candidates nominated at a primary, the court cannot allow candidates to withdraw even for deserving reasons. *Id.*

9. Nominations to fill vacancies.

Stats. 1915, c. 285, sec. 44, the general election law, provides that, should a vacancy occur in the nominees for any office, it may be filled before election day by the committee to which such power has been delegated, and Stats. 1915, c. 283, regulating nominations for public office by primaries, conventions, petitions, etc., by section 26 provides that vacancies in nominations occurring after any party convention shall be filled by the party committee, etc. The Democratic county convention nominated a candidate for clerk and treasurer, and on his declination took no further action and left the place blank in the certificate of nomination, and adjourned without delegating any authority to its committee, but the executive board of the committee filed a certificate of nomination. Held, that the filing of such certificate was unauthorized, and that mandamus would issue to compel the county clerk to exclude from the ballot at a coming general election the name of

the candidate contained in such certificate. *State v. Wilson*, 40 Nev. 131; 161 P. 306.

One purporting to act as a member of a county central committee of a political party, and who held proxies of other members, is at least a de facto officer, although disqualified by Stats. 1913, c. 282, sec. 18, because the holder of an appointive public office; a "de facto officer" being one whose acts, though not those of a lawful officer, the law upon principles of policy and justice will hold valid, because of the circumstances under which he acts or for the benefit of third persons. *State v. Harmon*, 38 Nev. 5; 143 P. 1183.

10. Objection and contests—Trial and determination by courts.

Rev. Laws, 1764, providing that any candidate at a primary election desiring to contest the nomination of another candidate for the same office may proceed by affidavit, etc., was a special law relating to primary election contests, which control as to them, the provisions of the civil practice act requiring that there shall be but one form of action and for the requisites of a complaint therein. *Brown v. Dunn*, 35 Nev. 167; 127 P. 81.

An affidavit initiating a primary election contest, alleging that the petitioner had reason to believe, and did believe, that mistakes had occurred in counting ballots in specified precincts sufficient to change the result of the election, was sufficient to secure a recount before a judge of the district court. *Id.*

Rev. Laws, 1513, provides that the board of county commissioners shall act as a board of canvassers and declare the general election returns, and that, when it shall appear from such canvass that any legislator, county or township officer voted for at such election has received a majority of ten votes or less, in such case, on the application of the defeated candidate, setting forth under oath that he has reason to believe that a mistake or mistakes have occurred on the part of the inspectors of the election in any election precinct or precincts, sufficient to change the result so far as the particular office is concerned, it shall be the duty of the board of county commissioners to immediately recount the ballots. This section was made applicable to primary elections by the primary election law of 1911, c. 167, sec. 14, amending Stats. 1909, c. 198, sec. 31. Held, that section 1513 did not authorize a recount before the courts, but left the parties free without a recount by the board to initiate such contests in the courts as might otherwise be prescribed by law. *Brown v. Dunn*, 35 Nev. 166; 127 P. 81.

An affidavit initiating a primary election contest was not fatally defective because it did not name the parties to the contest in a title or heading, where the body of the affidavit clearly showed who were the parties in interest. *Brown v. Dunn*, 35 Nev. 167; 127 P. 81.

Where a primary election contestant attacks the returns in more precincts than can be recounted within the period limited under the primary law, the original returns will stand under the presumption that they are correct, in precincts where the ballots are not recounted. *Id.*

An affidavit for a primary election contest before a judge of a district court, praying that all the ballots cast in the precincts objected to for the particular office might be recounted, and for such further relief as the court might seem meet and proper, was sufficient. *Id.*

Rev. Laws, 1763, provides that whenever it shall be made to appear by affidavit to any justice of the supreme court or judge of the district court of the proper county that an error or omission has occurred or is about to occur in the placing of any name on an official primary election ballot, or that any wrongful act has been or is about to be done by any officer or board charged with any duty concerning a primary election, etc., such justice or judge shall order the officer or person charged with the error to desist from the wrongful act or perform the duty or forthwith show cause why he should not do so. Section 1764 declares that any candidate at a primary election desiring to contest the nomination of another candidate for the same office may proceed by affidavit within five days after the completion of the canvass and the contestees shall be required to appear and abide the further order of the court. Held, that where a contestant for the nomination for justice of the peace in a township claimed that he was deprived of the nomination by mistakes in counting the ballots in certain precincts, he was entitled to initiate a contest by affidavit before the district court under such sections, regardless of his right to a recount by the board of county commissioners as is provided for by section 1513. *Id.*

11. Irregularities and defects.

Mere irregularity of the election officers in canvassing the ballots at a place other than the polling place will be disregarded under primary election law (Stats. 1909, c. 198), section 1 providing that the law shall be liberally construed so that the will of the electors shall not be defeated by any informality or failure to comply with its provisions in respect to conducting the election or certifying its results. *Nicholson v. Comins*, 33 Nev. 381; 111 P. 289.

VII. BALLOTS

12. Form and contents of ballots.

A ballot from which the number has not been torn off by the election officers is valid. *State v. Baker and Josephs*, 35 Nev. 302; 126 P. 345; 129 P. 452.

13. Form and contents of ballots — Party names.

Under Rev. Laws, 1737, providing for the nomination of candidates for public offices by direct vote or by nominating positions, and sections 1835, 1836, providing that

nominations made by any convention shall be certified by a certificate containing the name of each person nominated, and the designation of the party or principle which the convention represents, and providing that a certificate of nomination shall contain the name of the candidate to be nominated with the other information required in the certificate of nominating conventions, the names of candidates nominated by petition are entitled to go on the official ballot with the designation of the party named in the certificate of nomination, and where a certificate of nomination for state offices, United States senator, representative in Congress, and presidential electors designates the candidates as the nominees of the Progressive party, the secretary of state may not certify the candidates as independent, but must certify them as the candidates of the Progressive party. *State v. Brodigan*, 35 Nev. 35; 126 P. 680.

14. Indication of choice by voter.

Under Rev. Laws, 1852, which provides that in case of a constitutional amendment submitted the cross shall be placed after the answer which the voter desires to give, the cross in voting for or against a constitutional amendment need not be placed in the square, and a ballot with a cross before the square and after the word "Yes" or "No" in voting on a constitutional amendment is valid, as is also a ballot in which a single cross is placed in the square. *State v. Baker and Josephs*, 35 Nev. 301; 126 P. 345; 129 P. 452.

15. Irregularities, errors and omissions.

Under Rev. Laws, 1858, providing that when a voter marks more names than there are persons to be elected to office, or where it is impossible to determine his choice for any office, his vote for the office shall not be counted, a ballot containing a cross after the names of the candidates for the same office cannot be counted for either. *Id.*

16. Illegality—Distinguishing marks.

A ballot containing an erasure destroying the texture of the paper, or containing holes rubbed or torn through the paper by the voter, must be rejected. *State v. Baker and Josephs*, 35 Nev. 302; 126 P. 345; 129 P. 452.

A ballot containing marks other than those required for voting, apparently designed for identification, or which may be readily used for that purpose, will not be counted. *Id.*

Ballots containing crosses made with lead pencil or pen, or by marking with the wrong end of the stamp, must be rejected. *Id.*

Under Rev. Laws, 1858, providing that any ballot on which appears names or marks excepting as provided for shall not be counted, a ballot containing a cross in the square following a blank space left for filling in the name of a candidate for an office for which no candidate has been nominated, or containing the name of a candidate written by the voter, must be rejected. *Id.*

A ballot containing a cross placed in the square and another cross placed before the square and after the word "Yes" or "No" in voting on a constitutional amendment must be rejected because of the extra cross. *Id.*

Under Rev. Laws, 1852, which provides that the voter shall prepare his ballot by stamping a cross in the square, and in no other place, after the name of the person for whom he intends to vote, the cross must be in the square after the name of the candidate, and a ballot with a cross after the name of the candidate and before the square is invalid. *State v. Baker and Josephs*, 35 Nev. 301; 126 P. 345; 129 P. 452.

IX. COUNT OF VOTES, RETURNS, AND CANVASS

17. Constitutional and statutory provisions.

Rev. Laws, 1795, providing for the deposit of ballots and election returns in the office of the clerk of county commissioners, and that they shall not be subject to the inspection of any one except in cases of contested elections, and then only by the judge or body before whom the election is contested, is not repealed by a subsequent statute embodied in section 5409, providing that a public record in a public office may be admitted in evidence by the certificate of the custodian, and ballots must remain in the custody fixed by law except when their removal is authorized by some court, and ballots are not admissible in evidence in an election contest under the certificate of the clerk when they have been out of his official custody subsequent to the making of the certificate, at least in the absence of a proper foundation for their admission having been laid. *State v. Baker and Josephs*, 35 Nev. 2; 126 P. 345; 129 P. 452.

Rev. Laws, 1513, providing for recount of votes by the board of county commissioners, was not repealed by Stats. 1913, c. 284, the general election law, under Const. art. 4, sec. 21, providing that, where a general law can be made applicable, all laws shall be general and uniform in operation; since a general statute will not repeal particular provisions of a former act unless the two conflict irreconcilably. *McBride v. Griswold*, 38 Nev. 56; 146 P. 756.

18. Canvass of returns—Recount of votes.

Under Rev. Laws, 1513, defining election duties of the boards of county commissioners, such a board may reconvene after adjournment as a board of canvassers to conduct a recount, even in the absence of express authority in the statute; the imposition of a specific duty always implying power and function to perform it in a reasonable manner. *Id.*

X. CONTESTS

19. Constitutional and statutory provisions.

Where various remedies as to election contests were afforded, at common law, under the code of civil procedure, and the general election law (Stats. 1913, c. 284), and under Rev. Laws, 1513, concerning the powers of

boards of county commissioners in regard to elections, these remedies are concurrent, not being incompatible, and the party seeking relief may use any. *Id.*

20. Evidence—Admissibility.

A certificate of the county clerk of a county attached to a ballot box of a precinct in the county, which recites that he certifies that to the best of his knowledge and belief there are within the ballot box, so inclosed that it cannot be opened without destroying the certificate, the ballots cast at an election and the election returns, and that to the best of his knowledge and belief the ballots and returns are genuine, does not comply with the statutory requirements because it fails to show that the box and its contents were in his custody and in his office, or that the box and its contents are the genuine and authentic election records and documents of the precinct, and the ballot box is inadmissible in an election contest. *State v. Baker and Josephs*, 35 Nev. 1; 126 P. 345; 129 P. 452.

Under Rev. Laws, 1795, providing for the deposit of ballots and election returns in the office of the clerk of county commissioners, and declaring that ballots so deposited shall not be subject to the inspection of any one except in cases of contested elections, and then only by the judge or body before whom the election is contested, ballots and election returns duly deposited are public documents within section 5409, providing that a public document in the custody of a public officer may be admitted in evidence by the certificate of the custodian thereof that it is genuine and authentic. *State v. Baker and Josephs*, 35 Nev. 2; 126 P. 345; 129 P. 452.

A party to an election contest may attach all ballots in the same precinct to which he objects and have them filed as one exhibit, but the ballots of each precinct should be kept entirely separate. *State v. Baker and Josephs*, 35 Nev. 301; 126 P. 345; 129 P. 452.

Rev. Laws, 5409, which provides that a public record in the custody of a public officer in a public office may be admitted in evidence by the certificate of the custodian that it is genuine, affects the admissibility of the specified character of evidence, but not the method of the production thereof in court, and the supreme court in quo warranto involving an election contest has no authority to direct the county clerk of a county to certify to the court the ballots and election returns of the precincts of the county for the election. *State v. Baker and Josephs*, 35 Nev. 1; 126 P. 345; 129 P. 452.

21. Costs.

The compensation due the commissioner, appointed by the supreme court in an election contest to count the ballots which are undisputed and report the actual ballots in dispute, may be taxed as costs against the defeated party; but the court may not order relator to pay the costs in advance, though

the commissioner may withhold his report until payment is made by the party calling for it, and any compensation advanced by either party to receive and use the report will be recovered as other costs from the losing party. *State v. Baker and Josephs*, 35 Nev. 300; 126 P. 345; 129 P. 452.

XI. VIOLATION OF ELECTION LAWS

22. Illegal expenditures and corrupt practices.

Stats. 1913, c. 284, subc. 3, sec. 9, imposing upon candidates for state offices a fee of \$100 as a condition to filing nomination papers so that their names will go on the ballot, is valid, being a regulation, and not an additional qualification, and it being within the scope of the legislature's power to impose a substantial fee to prevent persons from placing their names on the ballots for fraudulent purposes, such as to draw strength in small localities from one candidate to benefit another. *State v. Brodigan*, 37 Nev. 492; 143 P. 306.

The primary election law (Stats. 1913, c. 282), sec. 8, provides that every candidate for nomination or election to a state office shall, five days before and fifteen days after the election at which he was a candidate, file with the secretary of state a sworn statement setting forth all the moneys contributed by him to aid his nomination or election. Late on the last day for filing nomination papers M. and G. each filed his nomination paper for the Republican nomination for attorney-general and paid the filing fee. On the second day thereafter G. filed with the secretary of state his purported withdrawal from the nomination. About half an hour later M. filed his purported withdrawal, which it was held could not be accepted, because on G.'s withdrawal M. became the Republican nominee by operation of law. Held, that, under such circumstances, M. was not a candidate for the nomination for the office at a primary election, and his failure to file a statement of his primary election expenses was no objection to his right to have his name printed on the ballot. *State v. Brodigan*, 37 Nev. 488; 143 P. 306.

See Clerks of Courts, 3; Quo Warranto, 1, 2.

ELECTORS

See Grand Jury, 2.

ELECTORS IN MILITARY SERVICE

See Statutes, 18.

ELECTRICITY

1. Injuries incident to production or use—Care required.

1. Injuries incident to production or use—Care required.

Corporations and individuals dealing in

the transmission of electricity, or having control of wires conducting electricity, are bound to thoroughly and frequently inspect the wires, to the end that they may, so far as it is within the reasonable power of man, render them safe, and see that they are properly insulated and placed. *Cutler v. Pittsburg Silver Peak*, 34 Nev. 46; 116 P. 418.

ELEMENTS OF LACHES

See Equity, 3.

ELIGIBILITY

See States, 1.

EMBALMER'S LICENSE

See Licenses, 5.

EMBEZZLEMENT

1. Indictment or information—Capacity or character in which property received or held.
2. Admissibility of evidence.

1. Indictment or information—Capacity or character in which property received or held.

An information alleging that defendant was manager of a county-owned telephone system, and as such manager came into possession of certain money for transmission to the county treasurer, and feloniously converted it to his own use, sufficiently charged embezzlement under Rev. Laws, 6653, as to misappropriation of corporation money by agent, manager, or clerk thereof. *State v. McFarlin*, 41 Nev. 486; 172 P. 371.

2. Admissibility of evidence.

In prosecution of county official for embezzlement, it was improper to admit evidence that he played slot machines for trade checks to a limited extent. *Id.*

See Criminal Law, 36, 60.

EMINENT DOMAIN

I. NATURE, EXTENT, AND DELEGATION OF POWER.

1. Distinction between eminent domain and other powers.
2. Particular uses or purposes—Development or working of mines.
3. Property subject to appropriation.
4. Exercise of delegated power—Necessity for appropriation.

II. COMPENSATION.

(B) Taking or Injuring Property as Ground for Compensation.

5. Property and rights subject of compensation—Water right.
6. Easements and other rights in real property.

(C) Measure and Amount.

7. Improvements and fixtures.

(D) Persons Entitled and Payment.

8. Persons entitled.

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9. Statutory provisions and remedies.
10. Parties—Intervention or substitution.
11. Hearing and determination as to right to take.
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14. Assessment by jury—Instructions.
15. Appeal—Right of review.
16. Costs, fees and expenses.

V. TITLE OR RIGHTS ACQUIRED.

17. Evidence—Offer for property.

I. NATURE, EXTENT, AND DELEGATION OF POWER

1. Distinction between eminent domain and other powers.

The water law (Stats. 1913, c. 140), as amended by Stats. 1915, c. 253, providing that, subject to existing rights, the water of all sources of supply belongs to the public, providing for the appointment of a state engineer, to whom application may be made to appropriate any unappropriated water in a public stream, etc., and providing that the state engineer, on his own initiative, or on application of one or more of the users of water of any stream, may make an order for the determination of the relative rights of the water users, there being provision for notice, etc., is not violative of Const. art. 6, sec. 1, providing that private property shall not be taken for public use without just compensation, since the law does not contemplate or suggest the taking of private property for any public or any other use. *Vineyard L. & S. Co. v. District Court*, 42 Nev. 3; 171 P. 166.

2. Particular uses or purposes—Development or working of mines.

Rev. Laws, 2456, provides that mining for gold, silver, etc., and other valuable mineral, is the paramount interest of this state, and is hereby declared to be a public use. Section 2458 authorizes any citizen to enter upon private unfenced and unimproved land and prospect thereon for precious metals. Section 5606 provides that the right of eminent domain shall be exercised for the public uses therein specified, including roads, railroads, etc., and dumping places to facilitate the milling, smelting, or other reduction of ores. Held, that the use of land as a place upon which to deposit tailings from an ore mill is a public use and land may be condemned therefor. *Goldfield Con. v. O. S. A. Co.*, 38 Nev. 427; 150 P. 313.

3. Property subject to appropriation.

Where property sought to be condemned as a place for the deposit of tailings from an ore mill, though located and patented as mining ground, had not been worked for several years, the mere possibility that it might be used in the future for mining purposes did not prevent condemnation, especially where the party seeking to condemn

was willing that the order of condemnation should provide that defendants might carry on mining operations so far as such use of the land did not interfere with its operations, and it appeared likely that the tailings, after being re-treated, would be carried away by the flood waters and a large portion of the land thereby freed from such tailings. *Goldfield Con. v. O. S. A. Co.*, 38 Nev. 428; 150 P. 313.

4. Exercise of delegated power—Necessity for appropriation.

An absolute necessity for the identical lands sought to be condemned is not necessary to authorize their condemnation. *Id.*

That there were other lands further away available for the purpose did not prevent the condemnation of land as a place for the deposit of tailings from an ore mill, since it is the general rule that, when a corporation seeks to exercise the right of eminent domain, its discretion in the selection of land will not be questioned if it acts in good faith and not capriciously. *Id.*

Rev. Laws, 5607, provides that the estates and rights in land therein specified are subject to be taken for a public use, including a fee simple when taken for public buildings, etc., or for an outlet for a place for the deposit of debris or tailings of a mine, mill, smelter, or other place for the reduction of ores. Held, that only such an interest in land desired as a place for the deposit of tailings as is necessary can be taken, as the statute does not say that a fee simple shall be taken, but only that it is subject to be taken. *Id.*

II. COMPENSATION

(B) TAKING OR INJURING PROPERTY AS GROUND FOR COMPENSATION

5. Property and rights subject of compensation—Water right.

The use of a water-distributing plant is itself "property" and is protected against confiscation by the constitution. *Goldfield Con. Water Co. v. Public Service Comm.*, 236 F. 979.

6. Easements and other rights in real property.

Under Rev. Laws, 5616, providing that the tribunal entertaining condemnation proceedings must ascertain and assess the value of each and every separate interest in the realty, where there was a leasehold interest in defendant's ranch, a right of way over which plaintiff was seeking to condemn, it was unnecessary for the jury to assess such interest where the plaintiff had purchased the interest from the lessee. *T. R. G. E. Co. v. Durham*, 38 Nev. 311; 149 P. 61.

(C) MEASURE AND AMOUNT

7. Improvements and fixtures.

Where a corporation, invested with the power to condemn land as a place upon which to deposit tailings from its ore mill,

placed such tailings upon land of another without the consent of the owner, and subsequently instituted proceedings to condemn such land, the common-law rule that a structure erected by a tort-feasor becomes a part of the land did not apply. *Goldfield Con. v. O. S. A. Co.*, 38 Nev. 427; 150 P. 313.

(D) PERSONS ENTITLED AND PAYMENT

8. Persons entitled.

The owner of a valid, subsisting, but unpatented, lode mining claim, is entitled to an award for condemnation of a portion of the surface for a railroad right of way. *L. V. & T. R. R. v. Summerfield*, 35 Nev. 229; 129 P. 303.

III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION

9. Statutory provisions and remedies.

The legislature may delegate to a jury the power to fix compensation and damages in condemnation proceedings; the constitution being silent as to the method of determining such matters. *T. R. G. E. Co. v. Durham*, 38 Nev. 311; 149 P. 61.

Where condemnation proceedings were instituted when Stats. 1907, c. 128, regulated the subject, and provided that compensation and damages should be assessed by commissioners, the assessment of damages in such proceedings by a jury was permissible after the enactment of Rev. Laws, 5606-5629, which regulated the subject of eminent domain, and expressly repealed the former act; since the general rule that a special statute enacted for a special purpose, when complete in itself, is not repealed, modified, or amended by a subsequent general statute, has no application where the later general statute expressly repeals the former act. *Id.*

In condemnation proceedings to assess the damages for a right of way taken by a power company, the complaint and answer contained names of commissioners to assess compensation and damages, as provided by Stats. 1907, c. 128, the act governing at the time. Rev. Laws, 5606-5629, relating to the subject of eminent domain, enacted after institution of the proceedings, provided in section 5624 that the provisions of the Revised Laws relative to civil actions should constitute the rules of practice in proceedings under said chapter. Section 5199 provided that an issue of fact should be tried by a jury, unless a jury trial was waived, and section 5818 provided that the repeal of a law by the act should not affect any action or proceeding commenced in a civil case before the repeal took effect, but the proceedings in such case shall, as far as practicable, conform to the provisions of the Revised Laws. *Held*, that the action of the trial court in calling a jury was justified; since the general rule against the retrospective construction of a statute does not apply to statutes relating only to remedies. *Id.*

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10. Parties—Intervention or substitution.

Persons claiming interest in land sought to be condemned, and for that reason claiming an interest in the award made, were expressly authorized to intervene by Stats. 1907, c. 128, sec. 8, providing that all persons in occupation of or having or claiming an interest in any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead, and defend, each in respect to his own property or interest or that claimed by him, in like manner as if named in the complaint. *L. V. & T. R. R. v. Summerfield*, 35 Nev. 229; 129 P. 303.

11. Hearing and determination as to right to take.

In proceeding to condemn land as a place for the deposit of tailings from an ore mill, evidence held to show that such land was necessary for that purpose. *Goldfield Con. v. O. S. A. Co.*, 38 Nev. 427; 150 P. 313.

In a proceeding to condemn certain patented mining claims upon which to deposit tailings from an ore mill, defendants moved to set the cause down for hearing on the questions of whether the use was one authorized by law, and whether the condemnation was necessary. On the hearing they objected to the court disposing of the further question whether the use to which the property was to be applied was a more necessary public use than that to which the land was already appropriated. *Held*, that this question was so interwoven with the other two questions that the rule against splitting causes of action applied, and the court properly determined such question. *Goldfield Con. v. O. S. A. Co.*, 38 Nev. 426; 150 P. 313.

12. Evidence as to compensation—Weight and sufficiency.

In condemnation proceedings for an electric power line, where the evidence of defendant's witnesses as to damages was shown by cross-examination to have been based upon the erroneous assumption that the plaintiff would have the right to fence the right of way sought to be condemned, and to do with it as it pleased, such evidence was insufficient as a basis to fix damages. *T. R. G. E. Co. v. Durham*, 38 Nev. 313; 149 P. 61.

13. Mode of assessment—Trial by jury.

Under Rev. Laws, 5226, providing that trial by jury may be waived by failure to demand the same at or before the time for trial, where condemnation proceedings were set for hearing on defendant's motion, and he did not demand a jury, and the case was continued until the order setting it for hearing was vacated, application being thereafter made by plaintiff for an order appointing commissioners to fix damages, at which time defendant requested that a jury be called to determine compensation, whereupon the court entered an order that a jury be called, its action was proper, since, when the order vacating the setting of the case

for trial was entered, the case was left in the status in which it was before set for trial, and defendant's right to a jury was revived. *T. R. G. E. Co. v. Durham*, 38 Nev. 312; 149 P. 61.

14. Assessment by jury—Instructions.

In condemnation proceedings for a right of way for electric power line, an instruction alluding to the "severance" of the land sought to be condemned from that not sought to be condemned was improper, as conveying to the jury the erroneous idea that the right of way could be fenced, and the defendant deprived of its use. *T. R. G. E. Co. v. Durham*, 38 Nev. 313; 149 P. 61.

In condemnation proceedings to take a right of way for an electric power line, an instruction that the property sought to be taken was an easement was proper where the prayer of the complaint designated the right sought to be acquired as an easement, and statute defined it as such. *T. R. G. E. Co. v. Durham*, 38 Nev. 312; 149 P. 61.

15. Appeal—Right of Review.

In condemnation proceedings, where the jury assessed the compensation for the land taken at \$11, and the damages at \$600, plaintiff paying the \$11 into court, such payment of such part of the judgment did not estop it to appeal from the assessment of damages. *T. R. G. E. Co. v. Durham*, 38 Nev. 313; 149 P. 61.

16. Costs, fees and expenses.

In condemnation proceedings, where the defendant's demand of damages in his answer is so unreasonable as to justify a fair-minded plaintiff in litigating the question, the court should not grant defendant's request for judgment for costs accruing after the filing of the answer. *Id.*

V. TITLE OR RIGHTS ACQUIRED

17. Evidence—Offer for property.

In condemnation proceedings, testimony of a mere offer for the land was inadmissible on issue of damage; since such testimony can be easily fabricated. *Id.*

EMPLOYEES

See States, 1.

EMPLOYER AND EMPLOYEE

See Master and Servant, 3; States, 8.

EMPLOYERS' LIABILITY ACT

See Master and Servant, 12, 15, 20.

ENCROACHMENT OF JUDICIARY UNDER WATER LAW

See Constitutional Law, 26.

END LINES

See Mines and Minerals, 13.

ENFORCEMENT

See Mechanics' Liens, 11.

ENFORCEMENT IN EQUITY

See Joint Adventures, 3.

ENFORCEMENT OF COURT RULE

See Costs, 17.

ENFORCEMENT OF LIENS

See Justices of the Peace, 2.

ENFORCEMENT OF MECHANIC'S LIEN

See Continuance, 1.

ENLARGEMENTS OF PHOTOGRAPHS IN EVIDENCE

See Criminal Law, 37.

"ENTERED" ON THE RESPECTIVE JOURNALS

See Constitutional Law, 1.

ENTRIES NUNC PRO TUNC

See Judgment, 16.

ENTRY

See Eminent Domain, 7.

ENTRY OF AMENDMENTS IN JOURNALS

See Constitutional Law, 1.

EQUALIZATION

See Taxation, 13.

EQUAL PROTECTION

See Intoxicating Liquors, 1.

EQUITABLE LIEN

See Mortgages, 4.

EQUITABLE PROCEEDINGS

See Appeal and Error, 108; Banks and Banking, 2; Motions, 2.

EQUITABLE RELIEF

See Actions, 1; Waters and Watercourses, 20.

EQUITABLE TITLE

See Limitations of Actions, 3.

EQUITY

I. JURISDICTION, PRINCIPLES, AND MAXIMS.

(A) *Nature, Grounds, Subjects, and Extent of Jurisdiction.*

1. Retention of jurisdiction acquired—Complete relief.

(C) *Principles and Maxims of Equity.*

2. Aids the vigilant.

II. LACHES AND STALE DEMANDS.

3. Grounds and essentials of bar—Prejudice from delay.
4. Grounds and essentials of bar—Loss of evidence.
5. Following statute of limitations.

X. DECREE AND ENFORCEMENT THEREOF.

6. Nature and essentials.

I. JURISDICTION, PRINCIPLES, AND MAXIMS**(A) NATURE, GROUNDS, SUBJECTS, AND EXTENT OF JURISDICTION****1. Retention of jurisdiction acquired—Complete relief.**

A court of equity, having jurisdiction of a suit by a divorced wife to recover her interest in the community property, will retain jurisdiction of the proceeding to do complete justice; other parties having intervened and set up claims to such property, and the husband having died. *Johnson v. Garner*, 233 F. 751.

2. Aids the vigilant.

Though equity considers that done which should have been done, it does not follow that an equitable right once existing will always exist; but, to avail oneself of such right, it must be asserted in apt time and diligently prosecuted. *Daly v. Lahontan Mines Co.*, 39 Nev. 15; 151 P. 514; 158 P. 285.

II. LACHES AND STALE DEMANDS**3. Grounds and essentials of bar—Prejudice from delay.**

If it appears that an adverse party has lost any advantage which he might have retained if plaintiff's claim had been asserted with reasonable promptness, or is exposed to any injury through inexcusable delay, a court of equity will not interfere to grant relief to the dilatory claimant. *Miller v. Walser*, 42 Nev. 499; 181 P. 437.

Some of the circumstances, in addition to the lapse of time, which will in equity constitute laches, are destruction of the monuments of title, the death or removal of the parties, the number of innocent purchasers who may be affected, radical changes in the condition or value of the property, and its speculative character. *Id.*

Strictly speaking, laches implies more than mere lapse of time in asserting a right, requiring some actual or presumable change of circumstances rendering it inequitable to grant relief. *Id.*

4. Grounds and essentials of bar—Loss of evidence.

Any circumstances tending to obscure the truth of a matter, as a loss of witnesses through the efflux of time, may prompt a court of equity to apply the doctrine of laches. *Id.*

5. Following statute of limitations.

Where the statute of limitations has not run, strong circumstances must exist to require the application of the doctrine of laches. *Id.*

X. DECREE AND ENFORCEMENT THEREOF**6. Nature and essentials.**

In a stockholder's suit for the winding up of a mining corporation, the sale of its property, and distribution of the proceeds, on the alleged ground of insolvency and fraudulent conduct of its officers and directors, on all of which allegations issue was joined and full proofs taken, the entry of an order appointing a receiver, with instructions to sell all of the property of the corporation, without determining any of the issues so tried and submitted, held, unauthorized and erroneous. *Tenabo M. & S. Co. v. Bates*, 220 F. 756; 136 C. C. A. 362.

See Appeal and Error, 15; Joint Ventures, 3; Judgment, 7, 8; Mines and Minerals, 19, 21; Quieting Title, 3.

EQUITY PRACTICE

See Motions, 2.

ERRONEOUS VERDICT

See Habeas Corpus, 7.

ERROR

See Criminal Law, 117.

ERROR IN JURISDICTION

See Judgment, 23.

ERROR INNOCENTLY MADE

See Mines and Minerals, 4.

ERRORS NOT APPEARING PREJUDICIAL FROM RECORD

See Criminal Law, 109.

ESCAPE

See Criminal Law, 100.

ESTABLISHMENT OF HOMESTEAD

See Homestead, 2.

ESTABLISHMENT OF ORPHANS' HOME "NEAR" A CITY

See Charities, 3.

"ESTATE OR INTEREST IN LAND"

See Landlord and Tenant, 1.

ESTATES

See Charities, 1, 2, 3; Executors and Administrators, 8.

ESTATES IN ADMINISTRATION

See Descent and Distribution, 3, 4.

ESTATES OF DECEASED PERSONS

See Descent and Distribution, 1, 2, 3, 4; Executors and Administrators, 3, 4, 6, 11, 12; Judgment, 34; Mechanics' Liens, 3; Payment, 5; Stipulations, 1.

ESTATES OF DECEDENTS

See Executors and Administrators, 1, 2; Payment, 5.

ESTOPPEL

I. BY RECORD.

1. Pleadings.

III. EQUITABLE ESTOPPEL.

2. Claim under written instrument.
3. Claim or position in judicial proceedings.
4. Failure to assert title or right.
5. Admission and receipts.
6. Permitting sale or mortgage of property.

(E) *Pleading, Evidence, Trial and Review.*

7. Pleading as defense—Necessity.
8. Weight and sufficiency of evidence.

I. BY RECORD

1. Pleadings.

A party to an action is not in position to assert an estoppel against the other party by reason of allegations in pleadings in a former action in which neither the party asserting the estoppel nor his grantors nor predecessors in interest were parties. An estoppel should be pleaded. *Round Mt. v. Ild. Mountain Spinx*, 36 Nev. 543; 138 P. 71.

III. EQUITABLE ESTOPPEL

2. Claim under written instrument.

Where one has an election either to ratify or disaffirm a conveyance, he can either claim under or against it, but he cannot do both, and, having adopted one course, he cannot afterwards pursue the other. *Moore v. Rochester W. M. Co.*, 42 Nev. 164; 174 P. 1017.

3. Claim or position in judicial proceedings.

Rev. Laws, 1350, provides that every foreign corporation having failed to comply with the preceding sections prescribing conditions on which it might do business within the state shall not be allowed to commence or defend any action in any court in the state until it shall have fully complied with the act. Held that, where plaintiff instituted suit against a foreign corporation which had not so complied, seeking a decree depriving defendant of title to a mining claim which it claimed to own within the state, plaintiff was estopped to deny defendant's right to make a defense and have the answer of defendant stricken and judgment rendered by default. *Scott v. Day-Bristol M. Co.*, 37 Nev. 290; 142 P. 625.

4. Failure to assert title or right.

Where purchasers by defendants and their predecessors were intended to include a strip of land and a house thereon, their continued, open, and notorious possession of the strip and the house was notice of their claim to plaintiffs or their predecessors subsequently obtaining their deeds to the lot; and in equity the subsequent purchasers, with such notice, were estopped, by long acquiescence in the complete acts of ownership exercised by the prior purchasers, from recovering the strip. *Quinn v. Small*, 38 Nev. 8; 143 P. 1053.

5. Admission and receipts.

Where a storage company, after repeated fruitless demands for the total amount due and upon being pressed for cash, made an unaccepted offer to accept a less amount in settlement, it was not estopped thereby from maintaining an action for the full amount. *McLean v. Mackenzie*, 34 Nev. 341; 124 P. 577.

6. Permitting sale or mortgage of property.

Where one without title or authority from real owner assumes to sell and convey land in fee, and true owner, knowing facts, consents to and accepts proceeds of sale in satisfaction of his interest, he cannot thereafter assert his legal title as against buyer. *Moore v. Rochester Weaver M. Co.*, 42 Nev. 164; 174 P. 1017.

(E) PLEADING, EVIDENCE, TRIAL AND REVIEW

7. Pleading as defense—Necessity.

To be relied on, an equitable estoppel must be pleaded. *Johnson v. Garner*, 233 F. 750.

8. Weight and sufficiency of evidence.

In action to quiet title to undivided interest in mining claims, evidence held to show plaintiffs were prevented from asserting legal title as against title of defendant company after having ratified their grantor's acts in conveying to defendant by accepting from him half of proceeds of sale of property by him. *Moore v. Rochester W. M. Co.*, 42 Nev. 164; 174 P. 1017.

See Appeal and Error, 86; Justices of the Peace, 11; Mines and Minerals, 19; Religious Societies, 1.

ESTOPPEL TO APPEAL

See Eminent Domain, 15.

EVIDENCE

I. JUDICIAL NOTICE.

1. Matters of art and skill.
2. Management and conduct of occupations.
3. Political divisions and bodies.

II. PRESUMPTIONS.

4. Judicial proceedings.
5. Official proceedings and acts.

IV. RELEVANCY, MATERIALITY, AND COMPETENCY.

(B) *Res Gestæ*.

6. Facts forming part of same transaction.

VII. ADMISSIONS.

(A) *Nature, Form, and Incidents.*

7. Nature and grounds for admission.
8. Offers of compromise or settlement.

(B) *By Parties or Others Interested in Event.*

9. Parties of record.

(E) *Proof and Effect.*

10. Conclusiveness and effect.

VIII. DECLARATIONS.

(A) *Nature, Form and Incidents.*

11. Self-serving declarations.
12. Declarations as to boundaries.

XI. PAROL OR EXTRINSIC EVIDENCE AFFECTING WRITINGS.

(A) *Contradicting, Varying, or Adding to Terms of Written Instrument.*

13. Grounds for exclusion of.
14. Writing incomplete on its face.

(C) *Separate or Subsequent Oral Agreement.*

15. Subsequent agreements.

(D) *Construction or Application of Language of Written Instrument.*

16. Nature of ambiguity or uncertainty.
17. Identification of subject-matter.

XII. OPINION EVIDENCE.

(A) *Conclusions and Opinions of Witnesses.*

18. Conclusions and matters of opinion or facts.
19. Matters directly in issue.
20. Rate of speed.
21. Cause and effect.

(B) *Subjects of Expert Testimony.*

22. Matters directly in issue.

XIV. WEIGHT AND SUFFICIENCY.

23. Positive and negative evidence.
24. Circumstantial evidence.
25. Credibility of witnesses.
26. Inferences from evidence.
27. Degree of proof.

I. JUDICIAL NOTICE

1. *Matters of art and skill.*

The courts of Nevada will take judicial knowledge of the fact that processes of crushing, amalgamating, and cyaniding ores will not effect an extraction of 100 per cent of the metallic contents. *Richardson v. National Ore Co.*, 34 Nev. 455; 124 P. 779.

2. *Management and conduct of occupations.*

Courts cannot take judicial notice of what percentage of mineral can be extracted from a particular class of ore, which is a matter of proof in each particular case, where material. *Dixon v. Southern Pacific*, 42 Nev. 73; 172 P. 368; 177 P. 14.

3. *Political divisions and bodies.*

Courts take judicial notice of the general

conditions in a state. *State v. Brodigan*, 37 Nev. 245; 141 P. 988.

II. PRESUMPTIONS

4. *Judicial proceedings.*

The presumption in favor of regularity of proceedings in a court of general jurisdiction, necessary to authorize it to act, does not apply in a proceeding not according to the common law. *Danforth v. Danforth*, 40 Nev. 436; 166 P. 927.

An action for absolute divorce is a proceeding not according to common law, to which the presumption in favor of regularity of proceedings in a court of general jurisdiction, necessary to authorize it to act, does not apply. *Id.*

5. *Official proceedings and acts.*

It will be presumed that the secretary of state will do his duty in filing and accepting certificates of nomination when presented at the proper time. *State v. Brodigan*, 34 Nev. 486; 125 P. 609.

The law presumes the regularity of official acts of public officers, except where it is sought by such presumption to take away personal rights of a citizen, or deprive him of his property or place a charge or lien thereon. *Knox v. Kearney*, 37 Nev. 394; 142 P. 526.

IV. RELEVANCY, MATERIALITY, AND COMPETENCY

(B) *RES GESTÆ*6. *Facts forming part of same transaction.*

Declarations made by a train agent while ejecting a passenger, such as that "We put them off here, and they sleep in box cars," and similar statements, are admissible as part of the *res gestæ* in an action to recover damages for wrongful ejection. *Forrester v. S. P. Co.*, 36 Nev. 249; 134 P. 753; 48 L. R. A. (N.S.) 1.

VII. ADMISSIONS

(A) *NATURE, FORM, AND INCIDENTS*7. *Nature and grounds for admission.*

What a party voluntarily admits to be true may be reasonably taken to be true, notwithstanding that the admission is contrary to his interest. *Peterson v. Silver Peak*, 37 Nev. 118; 140 P. 519.

8. *Offers of compromise or settlement.*

A resolution adopted by the board of directors of a corporation reciting that an officer of the corporation had in the past performed certain services outside of the duties of his office for which he was entitled to compensation is competent evidence in a subsequent suit by the officer to recover for such services as an admission of fact by the corporation, although the resolution was passed in an effort to compromise the claim. *Montana Tonopah M. Co. v. Dunlap*, 190 F. 612; 116 C. C. A. 286.

Where the vice-president of a corporation

was claiming compensation for extra services rendered for it, and the corporation in an effort to compromise passed a resolution admitting the rendition of the services and instructing the secretary and treasurer to pay him \$1,000 out of the funds of the company, such resolution was admissible in action against the corporation for such services as an admission, under the rule that the admission of any distinct fact made *eo animo* is competent though made in the course of proceedings for compromise. *Dunlap v. Montana-Tonopah M. Co.*, 192 F. 714; *aff.* 196 F. 612.

(B) BY PARTIES OR OTHERS INTERESTED IN EVENT

9. Parties of record.

Every prior statement of a party inconsistent with his present claim tends to throw doubt upon it, and is admissible in evidence as an admission against interest, regardless whether, when the statement was made, it was in his own favor or against his interest. *Peterson v. Silver Peak*, 37 Nev. 118; 140 P. 519.

The voluntary statement of one injured, made after the accident, and relating thereto, is admissible, if relevant, for consideration by the jury in connection with the other evidence. *Id.*

Where plaintiffs claimed to own a building which they constructed on defendant's right of way, partly out of materials owned by defendant, evidence that, in a prosecution for the theft of such materials, plaintiff's counsel had in their presence stated that the building and materials belonged to defendant, and that it had not been deprived of its ownership, was admissible as an admission. *Mirodliass v. S. P. Co.*, 38 Nev. 119; 145 P. 912.

(E) PROOF AND EFFECT

10. Conclusiveness and effect.

The weight to be given to an admission or declaration against interest is for the jury. *Id.*

VIII. DECLARATIONS

(A) NATURE, FORM, AND INCIDENTS

11. Self-serving declarations.

The fact that field notes of a group patent contain exclusions of the conflict area between the respective claims, which exclusions are made at the suggestion of the applicant for patent, cannot properly be said to be the self-serving declarations of the applicant, for, no matter at whose suggestion made, when the exclusions are embodied in the field notes of the deputy mineral surveyor and are approved by the surveyor-general, they become the exclusions made by the officers of the government upon whom the duty is imposed to make the same. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 545; 138 P. 71.

12. Declarations as to boundaries.

In an equitable action to quiet title to a mining claim, field notes made by plaintiff's surveyors, containing an exclusion of con-

flict area from one claim in favor of another, were properly excluded as self-serving acts by an agent of the plaintiff which could not be binding on the defendant. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 393; 129 P. 308.

XI. PAROL OR EXTRINSIC EVIDENCE AFFECTING WRITINGS

(A) CONTRADICTING, VARYING, OR ADDING TO TERMS OF WRITTEN INSTRUMENT

13. Grounds for exclusion of.

Where the oral testimony of witnesses as to events transpiring many years before is in conflict with documentary evidence made at the time, the latter is controlling. *Gamble v. Silver Peak*, 34 Nev. 351; 126 P. 111.

14. Writing incomplete on its face.

The order was on its face incomplete, so that parol evidence was admissible to supply the missing terms. *H. H. M. Safe Co. v. Ballett*, 38 Nev. 164; 145 P. 941.

(C) SEPARATE OR SUBSEQUENT ORAL AGREEMENT

15. Subsequent agreements.

An executed oral agreement to deliver the possession of mortgaged property is valid, and such agreement, whether made at the time of the execution of the mortgage or subsequent thereto, is an agreement independent of the mortgage, and cannot be regarded as an oral agreement, varying or contradictory to the terms of a contract in writing. *Douglass v. Thompson*, 35 Nev. 196; 127 P. 561; *Ann. Cas.* 1914C, 920.

(D) CONSTRUCTION OR APPLICATION OF LANGUAGE OF WRITTEN INSTRUMENT

16. Nature of ambiguity or uncertainty.

A lease authorizing the lessee to purchase "any part" of certain premises held too indefinite to be aided by parol evidence, and to afford the lessee no defense in a forcible entry and detainer action. *De Remer v. Anderson*, 41 Nev. 287; 169 P. 737.

17. Identification of subject-matter.

Land covered by a lease may be identified by parol evidence, but such evidence cannot supply an entire absence of description. *Id.*

XII. OPINION EVIDENCE

(A) CONCLUSIONS AND OPINIONS OF WITNESSES

18. Conclusions and matters of opinion or facts.

In an action for the overflow of plaintiff's ranch from defendants' dam, it was error to allow a witness to give his opinion as to the extent of the damage done; the proper method being to have the witness testify to the value of the ranch before and after the overflow. *McLeod v. Miller & Lux*, 40 Nev. 447; 153 P. 566; 167 P. 27.

19. Matters directly in issue.

In an employee's action for injuries caused by defects in a saw, witnesses could

testify as to its condition and the circumstances which came under their observation, but could not draw inferences and conclusions as to the danger or safety; these matters being for the jury. *Konig v. N. C. O. Ry.*, 36 Nev. 184; 135 P. 141.

20. Rate of speed.

A nonexpert may testify to the speed of a train. *Sherman v. S. P. Co.*, 33 Nev. 385; 111 P. 416; 115 P. 909; *Ann. Cas.* 1914A, 217.

21. Cause and effect.

In an action for the overflow of plaintiff's ranch by defendants' dam, where nonexpert witnesses testified in detail to the facts as to previous overflows, and the location of various dams and ditches was minutely described by them, the opinions of such witnesses as to whether defendants' dam caused the overflow should have been excluded, as witnesses cannot testify to matters of ultimate fact, except where it is impossible for them to detail the evidentiary facts so as to enable the jury to draw a conclusion. *McLeod v. Miller & Lux*, 40 Nev. 448; 153 P. 566; 167 P. 27.

Where, in an action for the overflow of plaintiff's ranch by defendants' dam, nonexpert witnesses testified in detail to the facts as to previous overflows, and the location of various dams and ditches was minutely described by them, the opinion of such witnesses as to whether defendants' dam caused the overflow should have been excluded, since witnesses cannot testify to matters of ultimate fact, except where it is impossible for them to detail the evidentiary facts so as to enable the jury to draw a conclusion. *McLeod v. Miller & Lux*, 40 Nev. 447; 153 P. 566; 167 P. 27.

(B) SUBJECTS OF EXPERT TESTIMONY

22. Matters directly in issue.

Where, because they are unknown, it is impossible to apply fixed natural laws to the solution of an issue, expert testimony may be considered as well as facts established by the testimony of other witnesses as the best means available of determining the truth. *Id.*

XIV. WEIGHT AND SUFFICIENCY

23. Positive and negative evidence.

The testimony of one claiming a mechanic's lien for work performed upon a building that he worked on the building, that at the time he looked for a notice signed by the owner that he would not be responsible for the repairs, and that there was no such notice at any time while he was doing the work is not negative testimony such as may be disregarded in the face of positive testimony that the notice was posted. *Gaston v. Avansino*, 39 Nev. 128; 154 P. 85.

24. Circumstantial evidence.

When circumstantial evidence is relied on to prove a fact, the circumstances must be proved and not themselves presumed. *Horgan v. Indart*, 41 Nev. 228; 168 P. 953.

25. Credibility of witnesses.

Physical facts will control testimony. *Carey v. Clark*, 40 Nev. 151; 161 P. 713.

Undisputed physical facts, which necessarily point to but one conclusion, cannot be overcome by contradictory oral testimony. *Weck v. Reno Traction Co.*, 38 Nev. 285; 149 P. 65.

26. Inferences from evidence.

Though intent is a matter of fact that ordinarily may be testified to by the person whose intent is in question, if the reason for the motive is equivocal, it is not conclusive as against presumptions and inferences equally as credible. *Moore v. Rochester W. M. Co.*, 42 Nev. 164; 174 P. 1017.

27. Degree of proof.

To maintain an affirmative defense it must be established by a preponderance of the evidence. *Gault v. Grose*, 39 Nev. 274; 155 P. 1098.

See Appeal and Error, 102, 104, 109; Criminal Law, 28; Master and Servant, 23; Mines and Minerals, 25; Payment, 2; Prostitution, 2; Taxation, 5, 22; Witnesses, 14.

EVIDENCE IN SUIT FOR BREACH OF CONTRACT

See Corporations, 1.

EVIDENCE, NEWLY DISCOVERED

See New Trial, 3, 4.

EVIDENCE OF ACQUIESCENCE

See Landlord and Tenant, 7.

EVIDENCE OF COCONSPIRATOR

See Criminal Law, 29, 110.

EVIDENCE OF EXPERTS

See Criminal Law, 40.

EVIDENCE OF OTHER OFFENSES

See Criminal Law, 24, 60.

EVIDENCE OF PHOTOGRAPHS OF PALM PRINTS

See Criminal Law, 37.

EVIDENCE OF VALIDITY OF LOCATIONS

See Pleading, 23.

EVIDENCE TO SUPPORT FINDINGS

See Appeal and Error, 89.

**EXACTION OF ADDITIONAL
COMPENSATION**

See Attorney and Client, 5.

EXAMINATION OF WITNESS

See Criminal Law, 117.

**EXCEPTION TO REMARKS OF
COUNSEL**

See Criminal Law, 91.

EXCEPTION TO SURETIES

See Justices of the Peace, 12.

EXCEPTIONS

See Appeal and Error, 45, 57, 63; Depositions, 3, 4; Criminal Law, 86, 94.

EXCEPTIONS, BILL OF

- I. NATURE, FORM AND CONTENTS.
 1. Scope and contents of bill.
 2. Form and arrangement of bill.
- II. SETTLEMENT, SIGNING, AND FILING.
 3. Settlement—Statutes.
 4. Allowance and settlement by judge.
 5. Proceedings to establish exceptions.

I. NATURE, FORM AND CONTENTS**1. Scope and contents of bill.**

The exceptions which may be contained in a bill of exceptions under Comp. Laws, 3860, authorizing the taking of a bill of exceptions to the rulings on testimony or points of law, are governed by section 3285, limiting the exceptions which may be included in a bill of exceptions to the objections as to matters of law taken before verdict or the decision, and a bill of exceptions based on an order of a referee denying a motion to set aside his conclusions of law, and the specifications of error relating thereto, made two or three weeks after the filing of his decision and order directing judgment and in the absence of and without service on or notice to the adverse party, cannot be considered. *Western Engineering and Construction Co. v. Nevada Amusement Co.*, 33 Nev. 203; 110 P. 1129.

2. Form and arrangement of bill.

Though improperly labeled a memorandum of exceptions, an instrument is a bill of exceptions on which appeal may be taken, if properly settled as such. *Ward v. Silver Peak*, 37 Nev. 470; 143 P. 119.

**II. SETTLEMENT, SIGNING, AND
FILING****3. Settlement—Statutes.**

Under the statutes relating to the making of records on which the rulings of the trial court may be reviewed, both parties to the litigation may participate in the making of the record, and the supreme court ought not to rely on statements that the adverse

party has not had an opportunity to amend or correct. *Western Engineering and Construction Co. v. Nevada Amusement Co.*, 33 Nev. 203; 110 P. 1129.

4. Allowance and settlement by judge.

The bill of exceptions under which, in some instances, an appeal may be taken, is to be settled by the court, and, unlike a memorandum of exceptions for motion for new trial for errors of law at the trial, need not contain a statement of counsel that in his judgment the exceptions are well taken. *Ward v. Silver Peak*, 37 Nev. 470; 143 P. 119.

5. Proceedings to establish exceptions.

An application to the supreme court, under the provisions of section 374 of the civil practice act (Rev. Laws, 5316), to have exceptions settled according to the facts, upon the ground that the trial judge has refused to so settle the same, to be sufficient should specifically set forth: First, the exception during the trial or proceeding to a ruling actually made; second, the facts supporting the exception; third, that such exception and the facts supporting it were in truth and in fact presented to the trial judge for settlement and allowance; fourth, the actual settlement by the trial judge, or judicial officer, of the statement; fifth, that on the settlement of the statement or bill the trial judge, or judicial officer, has failed or refused to allow the exception as stated; and, sixth, that the exception refused by the trial judge, and which the applicant seeks to prove, is material to and affects the substantial rights of the parties. *Miller v. Miller*, 36 Nev. 115; 134 P. 100; 136 P. 978.

If a trial judge, having had a statement or bill of exceptions presented to him, refuses to settle the same, the aggrieved party may proceed in the supreme court under section 392 of the civil practice act (Rev. Laws, 5334). *Id.*

An application to the supreme court to have settled certain alleged exceptions according to the fact, is premature if made before actual settlement made by the trial judge. *Id.*

EXCEPTIONS ON APPEAL

See Appeal and Error, 49, 62.

EXCESS GROUND

See Mines and Minerals, 4, 10.

EXCESS OF JURISDICTION

See Prohibition, 7.

EXCESSIVE DAMAGES

See Carriers, 11; Damages, 7.

**EXCLUSION OF OPINION AS TO
ULTIMATE FACT**

See Evidence, 21.

EX CONTRACTU

See Action, 2.

EXCUSABLE NEGLECT

See Appeal and Error, 57; Dismissal and Nonsuit, 1, 2.

EX DELICTO

See Action, 2.

EXECUTION

V. STAY, QUASHING, VACATING, AND RELIEF.
1. Injunction—Grounds.

VII. SALE.

(A) *Manner, Conduct, Validity, and Confirming or Vacating.*

2. Collateral attack on sale.

(C) *Redemption.*

3. Amount required to redeem.

V. STAY, QUASHING, VACATING, AND RELIEF

1. Injunction—Grounds.

An owner whose property is wrongfully seized under execution against another has, ordinarily, an adequate remedy at law for damages, except where his business and credit will be so affected as to make it difficult or impossible to estimate the injury in damages, in which case he may seek injunctive relief. *Marshon v. Toohey*, 38 Nev. 248; 148 P. 357.

VII. SALE

(A) *MANNER, CONDUCT, VALIDITY, AND CONFIRMING OR VACATING*

2. Collateral attack on sale.

Where land was sold upon execution, persons not tracing their title through the judgment debtor cannot question the sufficiency and validity of the sheriff's deed. *Long v. Tighe*, 36 Nev. 129; 133 P. 60.

(C) *REDEMPTION*

3. Amount required to redeem.

Where property sold at execution was bought in by the judgment creditor, the amount of the sheriff's fees which had to be paid by the creditor, together with the amount of the judgment, becomes a charge against the redemptioner. *Roberts v. Ingalls*, 36 Nev. 325; 135 P. 927; 48 L. R. A. (N.S.) 542; Ann. Cas. 1915C, 1119.

See Appeal and Error, 41; Mortgages, 2.

EXECUTIVE WARRANT

See Habeas Corpus, 13.

EXECUTOR

See Judgment, 14.

EXECUTORS

See Appeal and Error, 80.

EXECUTORS AND ADMINISTRATORS

II. APPOINTMENT, QUALIFICATION AND TENURE.

1. Jurisdiction of courts—Existence of assets.

2. Operation and effect of appointment.

IV. COLLECTION AND MANAGEMENT OF ESTATE.

(A) *In General.*

3. Interest on funds of estate.

4. Expenditures.

(B) *Real Property and Interests Therein.*

5. Title and authority.

(C) *Personal Property.*

6. Property acquired by executor or administrator.

VI. ALLOWANCE AND PAYMENT OF CLAIMS.

(B) *Presentation of Allowance.*

7. Time for presentation.

8. Distribution of estate—"Contingent claim."

X. ACTIONS.

9. Set-off and counterclaim.

10. Pleading.

XI. ACCOUNTING AND SETTLEMENT.

(A) *Duty to Account.*

11. Time for accounting.

XIII. LIABILITIES ON ADMINISTRATION BOND.

12. Nature and extent.

II. APPOINTMENT, QUALIFICATION AND TENURE

1. Jurisdiction of courts—Existence of assets.

Where the plaintiff, in an action to recover damages for the wrongful expulsion from a train, who was a nonresident and had no other property in the state, died while the action was pending, his right of action was property upon which letters of administration might issue in the county in which the case was pending, even though the action might also have been instituted in the state of his residence. *Forrester v. S. P. Co.*, 36 Nev. 247; 134 P. 753; 48 L. R. A. (N.S.) 1.

2. Operation and effect of appointment.

The appointment of an administratrix cannot be attacked collaterally, in an action instituted by a decedent before his death and continued by the administratrix, where the court appointing her had jurisdiction to make the appointment. *Id.*

IV. COLLECTION AND MANAGEMENT OF ESTATE

(A) *IN GENERAL*

3. Interest on funds of estate.

Where the estate at all times had sufficient money on deposit under certificates of deposit to pay indebtedness, but the administrator made no accounting for nearly seven years, he was chargeable with interest on the moneys, although there was a

suit to establish heirship. In *Re Delaney's Estate*, 41 Nev. 384; 171 P. 383; L. R. A. 1918D, 1022.

Where money of an estate is held by an administrator after the time when by proper accounting and other administrative acts in conformity with the statutory requirements, he could have paid out and distributed the same by court order, he should be chargeable with interest on the money thus held. *Id.*

4. Expenditures.

Where an estate was administered in a judicial district consisting of two counties where sessions of the district court might occur at the judge's direction, the administrator's failure to secure an order for expenditure of moneys in assessment work on mining claims for one year would not necessarily charge him with such amount when the investment proved to be speculative and worthless. *Id.*

(B) REAL PROPERTY AND INTERESTS THEREIN

5. Title and authority.

Where an estate had few debts, and consisted largely of cash and four mining claims, and the administrator, without court order, paid out \$1,600 for assessment work on the claims, when adjoining claims gave promise of profit, and later abandoned the claims, the venture was so speculative as to surcharge the administrator with such sums. *Id.*

(C) PERSONAL PROPERTY

6. Property acquired by executor or administrator.

No matter how many fraudulent acts an administrator is guilty of, he is not divested of contractual rights under a valid mortgage which he has purchased. *Guisti v. Guisti*, 41 Nev. 349; 171 P. 161.

VI. ALLOWANCE AND PAYMENT OF CLAIMS

(B) PRESENTATION OF ALLOWANCE

7. Time for presentation.

A claim which is to be paid at a future date, and is so contingent that it is uncertain whether or not any demand will accrue, is not such a claim as is required to be filed within three months after the date of the first publication of notice to creditors under Rev. Laws, 5964. *Pruett v. Caddigan*, 42 Nev. 329; 176 P. 787.

8. Distribution of estate — "Contingent claim."

The obligation of a surety on a guardian's bond, being a subsisting one, is not a "contingent claim" referred to in Rev. Laws, 6057, providing for payment into court of amount that would be payable if the whole were established as absolute. *Id.*

X. ACTIONS

9. Set-off and counterclaim.

Rev. Laws, 5965, providing for the support by affidavits of claims against decedents' estates, contemplates that offsets in favor of the decedent and known to the claimant be credited upon the claim. *Hibbard v. Clark*, 39 Nev. 230; 156 P. 447.

10. Pleading.

In a complaint on a rejected claim against a decedent's estate, the facts constituting an offset or counterclaim in favor of the estate must be alleged; the general rule of pleading that a complaint need not allege facts constituting an offset or counterclaim being inapplicable by reason of the provisions of Rev. Laws, 5965, which contemplates the credit of offsets upon such claims. *Id.*

Where plaintiff's rejected claim against decedent's estate admitted a set-off in favor of decedent for several loans made on the security of real estate and contracts to purchase real estate, the complaint in an action on such rejected claim was insufficient for uncertainty where it failed to specifically set out the loans made, and the property transferred and contracts assigned as security with sufficient fullness to acquaint the defendant administrator and the court therewith. *Id.*

XI. ACCOUNTING AND SETTLEMENT

(A) DUTY TO ACCOUNT

11. Time for accounting.

Under Rev. Laws, 5963, 5964, 5967, 6041, as to duties of an administrator, expedient administration is required, and where an estate had cash on hand to meet all indebtedness, and everything was present to facilitate a speedy discharge of the trust, but the administrator permitted the estate to drag on for nearly seven years without an accounting and without any attempt to secure an order for expenditure of money, he was guilty of a breach of his duties. In *Re Delaney's Estate*, 41 Nev. 384; 171 P. 383; L. R. A. 1918D, 1022.

XIII. LIABILITIES ON ADMINISTRATION BOND

12. Nature and extent.

An administrator is bound to the exercise of care and diligence, such as prudent and judicious men ordinarily bestow upon their own important affairs, and it is his duty to settle and distribute the estate with as little delay as practicable; and whenever he does what the law prohibits, or fails to exercise reasonable care and diligence in the endeavor to do what the law enjoins, he and his sureties are liable for the damage consequent upon such act or omission. *Id.*

See Limitation of Actions, 13.

EXEMPLARY DAMAGES

See Damages, 4; Principal and Agent, 9.

EXEMPTION

See Taxation, 7.

EXEMPTION FROM FORCED SALE

See Homestead, 2.

EXISTENCE OF TRUST

See Limitation of Actions, 9.

EXPECTANCY

See Husband and Wife, 3.

EXPENSES

See Schools and School Districts, 1.

EXPENSES ON APPEAL

See Costs, 17.

EXPERT EVIDENCE

See Appeal and Error, 108; Attorney and Client, 7.

EXPERT TESTIMONY

See Criminal Law, 41.

EXPERTS

See Criminal Law, 40; Evidence, 21, 22.

EXPRESS COMPANY

See Taxation, 3, 4, 10, 12.

EXPRESS MENTION AND IMPLIED EXCLUSION

See Intoxicating Liquors, 4.

EXPRESS TRUSTS

See Pledges, 1.

EXTENT OF DAMAGE

See Evidence, 18.

EXTRACTION OF MINERAL FROM ORE

See Evidence, 2.

EXTRADITION**II. INTERSTATE.**

1. Person subject to extradition—Fugitive from justice.
2. Indictment or affidavit charging offense.
3. Warrant for arrest and delivery.
4. Examination, determination, and review of proceedings.

II. INTERSTATE

1. Person subject to extradition—Fugitive from justice.

A person who was not within the demanding state at the time the crime is alleged to have been committed, unless an accessory, is not a fugitive from justice. In *Re*

Kuhns, 36 Nev. 487; 137 P. 83; 50 L. R. A. (N.S.) 507.

A person, though not within a foreign state at the time he is charged in extradition papers with the commission of a crime therein, may nevertheless be a fugitive from justice of such foreign state if he was an accessory to such crime or the same was committed through his agent. Under such a state of facts he will be deemed to have had a constructive presence within such foreign state at the time of the commission of the crime. *Id.*

A person held upon an executive warrant may upon habeas corpus proceedings show that he is not a fugitive from justice and upon such showing is entitled to be discharged. *Id.*

Petitioner in habeas corpus was married in the state to which he was sought to be extradited. He was a minor and was dependent upon his father for support. After the marriage defendant and his wife separated voluntarily, the wife going back to live with her mother. When petitioner left the state he had no intention of separating from his wife, or of abandoning her. Held, that he was not a fugitive from justice within the law of extradition upon the charge of wife abandonment in the state of his marriage. In *Re Roberson*, 38 Nev. 326; 149 P. 182; L. R. A. 1915E, 691.

A person must be within the state at the time of the commission of the acts constituting the offense for which he is sought to be extradited in order to become a fugitive from justice. *Id.*

2. Indictment or affidavit charging offense.

The indictment under which petitioner was sought to be extradited to Ohio to be tried was properly entitled, and alleged that the grand jurors of H. County present that petitioner on the date stated "with force and arms 'at' the county of H. aforesaid," and thence continually to the finding of the indictment, being the father of F., a child of five years, did unlawfully neglect and refuse to provide such child with the necessary and proper home, care, etc., said petitioner being able to provide the child with a necessary proper home, etc., contrary to the form of the statute, etc., and against the peace of the state. The Ohio act of April 28, 1908 (99 Ohio Laws, p. 228), provides that the father of a child under 16, living in the state, who, being able, etc., shall neglect or refuse to provide a necessary and proper home, care, etc., shall be guilty of a felony, and that the offense shall be held to have been committed where the child may be when complaint is made, and that citizenship acquired by the father shall continue until the child has reached 16. If a child lives so long in the state. Petitioner claimed on habeas corpus that the indictment did not authorize his extradition for failure to allege the child's whereabouts at the time of neglect, or that the neglect was wilful, or the dependency or destitution of the child. Held, that the indictment was

not so faulty in substance, as to prevent the execution of the writ, but sufficiently alleged for that purpose that the child was in the jurisdiction of the court finding the indictment when it was returned. *Ex Parte Lewis*, 34 Nev. 28; 115 P. 729.

Extradition cannot be properly granted unless the indictment against the accused contains every substantial element of the crime charged. *Ex Parte Rovnianek*, 41 Nev. 141; 168 P. 327.

3. Warrant for arrest and delivery.

Where a certified copy of an original information, on which extradition proceedings in the demanding state were based, was attached to the requisition, and charged petitioner with having separated himself from his wife and minor child, they being destitute and dependent wholly upon their earnings for adequate support, contrary to the statute, etc., and throughout the papers such offense was designated as "desertion," and was made a misdemeanor by the Pennsylvania act of March 13, 1903 (P. L. 26), a warrant for the arrest and return of petitioner to answer for the crime of "desertion" was not objectionable as failing to set out an offense known to the laws of the demanding state. *Ex Parte Hose*, 34 Nev. 87; 116 P. 417.

4. Examination, determination, and review of proceedings.

The guilt or innocence of one held under extradition as a fugitive from the justice of another state is a matter exclusively for the courts of the demanding state where the evidence is conflicting. *Ex Parte La Vere*, 39 Nev. 214; 156 P. 446.

See Criminal Law, 110; Habeas Corpus, 8, 10.

EXTRALATERAL RIGHTS

See Mines and Minerals, 13.

EYEWITNESSES

See Criminal Law, 58.

FACTS

See Evidence, 21; Trial, 12.

FAILURE TO DENY AFFIRMATIVE ANSWER

See Pleading, 13.

FAILURE TO ESTABLISH ALLEGATIONS

See Waters and Watercourses, 13.

FAILURE TO FILE STATEMENT ON APPEAL

See Appeal and Error, 52.

FAILURE TO FIND AS REQUESTED

See Appeal and Error, 125.

FALSE IMPRISONMENT

I. CIVIL LIABILITY.

(A) Acts Constituting False Imprisonment and Liability Therefor.

1. Nature and elements—Illegality of arrest.
2. Nature and elements—Illegality of detention after arrest.

I. CIVIL LIABILITY

(A) ACTS CONSTITUTING FALSE IMPRISONMENT AND LIABILITY THEREFOR

1. Nature and elements—Illegality of arrest.

Under Comp. Laws, 4780, providing that every one who shall wilfully and unlawfully injure any property belonging to another shall be punished, a complaint sufficiently avers ownership by another than accused, as against collateral attack in false imprisonment against a justice of the peace, where it charges the severance and removal of the property from the possession of the complaining witness; possession being prima facie evidence of ownership. *Gordon v. District Court*, 36 Nev. 1; 131 P. 134; 44 L. R. A. (N.S.) 1078.

Where a justice of the peace had jurisdiction a party prejudiced by his decision or acts in committing him to jail has no recourse in a civil action for damages against the justice and his sureties, even though the latter acted with malice. *Id.*

2. Nature and elements—Illegality of detention after arrest.

Where a justice of the peace fixed the bond of one charged with a misdemeanor at \$1,000 cash, the erroneous requirement of cash bail did not deprive the justice of jurisdiction so as to render him liable for the improper order; it appearing that the accused made no offer of any sort of bail. *Id.*

FALSE PRETENSES

1. Acts constituting other offense.
2. Indictment and information—Requisites and sufficiency.

1. Acts constituting other offense.

General incorporation laws, sec. 73 (Rev. Laws, 1174), making it a misdemeanor for officer of any corporation to make false representations, does not affect the crime of obtaining money under false pretenses defined by Rev. Laws, 6704. In *Re Crane*, 40 Nev. 338; 163 P. 246.

2. Indictment and information—Requisites and sufficiency.

Indictment charging the president of an insurance corporation with obtaining money by selling stock under false pretenses stated a felony under Rev. Laws, 6704, defining

crime of obtaining money under false pretenses, and not a misdemeanor, under section 1174, prohibiting officer of any corporation from making false representations, the fact that the accused received the money as president being immaterial. *Id.*

FALSE TESTIMONY

See Criminal Law, 79.

"FALSUS IN UNO, FALSUS IN OMNIBUS"

See Criminal Law, 79.

FEDERAL CONSTITUTION

See Intoxicating Liquors, 1.

FEDERAL COURTS

See Courts, 8, 19.

FEDERAL LAND DEPARTMENT

See Public Lands, 8.

FEDERAL LAND OFFICE

See Public Lands, 5, 6, 9, 10.

FEDERAL QUESTION

See Courts, 9.

FEDERAL SAFETY APPLIANCE ACT

See Master and Servant, 12, 15, 19, 20.

FEDERAL SUPREME COURT

See Courts, 9, 21.

FEDERAL TITLE

See Waters and Watercourses, 4.

FEDERAL TOWN SITE

See Public Lands, 4.

FEEES

See Sheriffs, 3.

FEEES OF COURT CLERKS

See Costs, 6.

FEEES OF WITNESS

See Costs, 3.

FELONY

See Libel and Slander, 11, 12, 13.

FENCING CONTRACT

See Contracts, 8.

FIELD NOTES

See Mines and Minerals, 15, 16, 17; Public Lands, 9.

FILING AND SERVING COST BILL

See Costs, 17.

FILING ASSIGNMENT OF ERRORS

See Appeal and Error, 2, 17, 18.

FILING COPY OF POINTS AND AUTHORITIES

See Appeal and Error, 65.

FILING COST BILL

See Costs, 17.

FILING OF CLAIM

See Executors and Administrators, 7.

FINAL ACCOUNT

See Appeal and Error, 89.

FINAL DECREE

See Divorce, 21.

FINAL JUDGMENT

See Divorce, 27; Insane Persons, 1.

FINDINGS

See Appeal and Error, 89, 92, 103, 104, 109, 110, 125; Negligence, 12; Trial, 29, 31.

FINDINGS ON CONFLICTING EVIDENCE

See Appeal and Error, 110.

FINES

1. Suspending fines.

1. Suspending fines.

In view of the constitution (art. 5, sec. 14) providing that the governor, justices of the supreme court, and attorney-general, or a majority of them, of whom the governor shall be one, may remit fines and forfeitures, commute punishments, and grant pardons, section 13, providing that the governor can suspend the collection of fines and forfeitures and grant reprieves for not exceeding sixty days dating from the time of conviction, authorizes the governor to suspend the collection of fines for only sixty days, and not indefinitely, as this would create a conflict between the two sections. *Ex Parte Shelor*, 33 Nev. 361; 111 P. 291.

The governor having under the constitution (art. 5, sec. 13) power to suspend a

fine for only sixty days, his order attempting to make an indefinite suspension is void ab initio, and not valid for sixty days. *Id.*

FIRST BREACH OF CONTRACT

See Contracts, 8.

FISH

1. Power to protect and regulate.
2. Constitutional and statutory provisions.

1. Power to protect and regulate.

The state has inherent right as a sovereign power to enact laws for the protection and preservation of fish and game in the waters and upon the land within its limits, and he who takes such fish and game does so as a privilege, and not a right; the privilege being subject to such conditions and limitations as the state may impose. *Ex Parte Crosby*, 38 Nev. 389; 149 P. 989.

2. Constitutional and statutory provisions.

Stats. 1913, c. 270, sec. 9, making it unlawful to catch or have in one's possession on any calendar day more than ten pounds of certain kinds of fish, is a statute properly enacted under the police power of the state for the preservation and protection of fish within the public waters thereof. *Id.*

FLOWAGE

See Waters and Watercourses, 17.

FORCE AND EFFECT OF ALL PARTS

See Statutes, 34.

FORCED SALE

See Homestead, 2, 3.

FORCIBLE ENTRY AND DETAINER

1. Evidence.
2. Damages.
3. Review—Appeal and trial de novo.
4. Costs.

1. Evidence.

In an action to recover damages for forcible entry, plaintiff must prove his title or right to possession of the property where the pleadings raise that issue. *Glock v. Elges*, 39 Nev. 415; 159 P. 629.

2. Damages.

Rev. Laws, 5508, providing that in forcible entry cases, judgment "may" be entered for treble the actual damages, permits, but does not require, such penalty to be imposed. *Id.*

3. Review—Appeal and trial de novo.

The supreme court will not modify a judgment to allow treble damages in a forcible entry case, under Rev. Laws, 5508, where the facts are not before it. *Id.*

4. Costs.

Rev. Laws, 5377, allowing plaintiff costs upon a favorable judgment in an action involving the title or possession of real estate, applies to recovery of damages for forcible entry, where plaintiff's title or right of possession was disputed. *Id.*

FORECLOSURE OF MECHANIC'S LIEN

See Continuance, 1; Mines and Minerals, 29.

FORECLOSURE OF MORTGAGE

See Guardian and Ward, 1.

FOREIGN CORPORATIONS

See Constitutional Law, 46; Corporations, 15; Estoppel, 3; Removal of Causes, 3.

FOREIGN DECREE

See Judgment, 13, 35, 36.

FOREIGN STATE

See Divorce, 29, 30.

FORFEITURES

I. NATURE AND SCOPE OF PUNISHMENT.

1. Penalties.

I. NATURE AND SCOPE OF PUNISHMENT

1. Penalties.

Penalties and forfeitures are not favored, unless plainly expressed. *State v. Harmon*, 35 Nev. 189; 127 P. 221; Ann. Cas. 1914C, 891.

See Corporations, 15; Statutes, 4.

FORGERY

1. Indictment and information—Intent.

1. Indictment and information—Intent.

An indictment, charging that the defendant "did falsely and feloniously forge" a check, sufficiently charged that he knew the false or forged character of the check, especially where not objected to before trial. *State v. Kruger*, 34 Nev. 302; 122 P. 483.

FORMER JUDGMENT

See Judgment, 30, 32, 35.

FORM OF DEED

See Mortgages, 1.

FORM OF JUDGMENT

See Appeal and Error, 126.

FOURTEENTH AMENDMENT

See Intoxicating Liquors, 1.

FRANCHISE

See Waters and Watercourses, 20.

FRATERNAL ORDERS

See Charities, 1, 3.

FRAUD**II. ACTIONS.**

(B) *Parties and Pleading.*

1. Pleading.

II. ACTIONS

(B) *PARTIES AND PLEADING*

1. Pleading.

Fraud must be alleged and proved. Held, that no element of fraud is involved in this case. *Round Mountain v. Round Mt. Sphinx*, 36 Nev. 547; 138 P. 71.

See Arbitration and Award, 2; Attorney and Client, 5; Divorce, 15, 16, 17, 20; Judgment, 22; Mechanics' Liens, 12; Mines and Minerals, 21; Principal and Agent, 3, 4; Reformation of Instruments, 2.

FRAUD AND CONCEALMENT

See Joint Adventures, 3; Limitation of Actions, 2.

FRAUD AND CONCEALMENT BY JOINT ADVENTURER

See Trusts, 2, 3.

FRAUDS, STATUTE OF**IX. OPERATION AND EFFECT OF STATUTE.**

1. Contracts performed only as to part within statute—Agreements relating to real property.

X. PLEADING, EVIDENCE, TRIAL, AND REVIEW.

2. Pleading statute as defense—Necessity.

IX. OPERATION AND EFFECT OF STATUTE

1. Contracts performed only as to part within statute—Agreements relating to real property.

A contract to devise property in consideration of plaintiff's rendition of services to deceased and of remaining with him until his death is not, where fully performed on the part of plaintiff, within the statute of frauds. *Clow v. West*, 37 Nev. 267; 142 P. 226.

X. PLEADING, EVIDENCE, TRIAL, AND REVIEW

2. Pleading statute as defense—Necessity.

The statute of frauds may be relied upon as a defense under a general denial. *Dixon v. Pruett*, 42 Nev. 346; 177 P. 11.

FRAUDULENT ACTS

See Executors and Administrators, 6.

FRAUDULENT AWARD OF ARBITRATORS

See Appeal and Error, 95.

FRAUDULENT CONVEYANCES**I. TRANSFERS AND TRANSACTIONS INVALID.**

(C) *Property and Rights Transferred.*

1. Stock in trade.

III. REMEDIES OF CREDITORS AND PURCHASERS.

(A) *Persons Entitled to Assert Invalidity.*

2. Nature of claims of creditors.

(G) *Evidence.*

3. Weight and sufficiency—Intent of grantor.

I. TRANSFERS AND TRANSACTIONS INVALID

(C) *PROPERTY AND RIGHTS TRANSFERRED*

1. Stock in trade.

A sale of a saloon and dance-hall, without complying with bulk sales act (Rev. Laws, 3908-3912), regulating the sale of merchandise in bulk otherwise than in the usual course of trade, is prima facie void as against creditors of the seller, and the stock of liquors sold and the money derived therefrom are subject to execution against the seller, while the glassware, bar fixtures, and furnishings of the dance-hall and saloon are not within the description of "portion of a stock of merchandise" within the statute, and these articles are not subject to execution against the seller. *Marshon v. Toohey*, 38 Nev. 248; 148 P. 357.

III. REMEDIES OF CREDITORS AND PURCHASERS

(A) *PERSONS ENTITLED TO ASSERT INVALIDITY*

2. Nature of claims of creditors.

An unrecorded bill of sale of undelivered personalty, executed by a deceased, is not void as to an order of court setting aside a monthly allowance to wife of deceased, the wife not being a "creditor" within Rev. Laws, 1078 (Comp. Laws, 2703), making sales and assignments of personalty without delivery fraudulent as to creditors. *Guisti v. Guisti*, 41 Nev. 349; 171 P. 161.

(G) EVIDENCE

3. Weight and sufficiency—Intent of grantor.

Evidence held to support a finding that a mortgage was executed in good faith, without intent on the part of either party to hinder, defraud, or delay any creditor of the mortgagor. *Nevada Con. M. Co. v. Lewis*, 34 Nev. 500; 126 P. 105.

FRAUDULENT DEALINGS AND NEGLIGENCE

See Action, 5.

FREIGHT

See Carriers, 7.

FUGITIVE FROM JUSTICE

See Extradition, 1, 4; Habeas Corpus, 13, 16.

FUNCTION OF INNUENDO

See Libel and Slander, 6.

FUNCTION OF MANDAMUS

See Mandamus, 1, 2, 7, 15.

FUNDS

See Municipal Corporations, 2, 9.

FUNDS OF ESTATE

See Executors and Administrators, 3.

FUTURE INJURY

See Waters and Watercourses, 19.

GAMBLING

See Criminal Law, 44; Judgment, 5.

GAME

See Fish, 1.

GARNISHMENT**XI. WRONGFUL GARNISHMENT.**

1. Nature and grounds of liability.
2. Actions.

XI. WRONGFUL GARNISHMENT**1. Nature and grounds of liability.**

The assignee of a judgment may recover damages for the period a wrongful garnishment of it remained in force, although the judgment debtor on the day following such garnishment instituted interpleader proceedings and paid the money into court. *McIntosh v. Knox*, 40 Nev. 403; 165 P. 337.

The assignee of a judgment may recover damages for its wrongful garnishment in an action to which he is not a party without showing malice or suing on the attachment bond or under specific statutory authority. *Id.*

2. Actions.

The assignee of a judgment wrongfully garnished may recover attorney's fees paid in interpleader proceedings instituted by the garnished judgment debtor. *Id.*

GENERAL AND SPECIAL STATE FUNDS

See States, 4.

GENERAL APPROPRIATION ACTS

See States, 8.

GENERAL FUND

See Municipal Corporations, 9.

GENERAL LAND OFFICE

See Mines and Minerals, 5, 14, 15.

GENERAL OBJECTIONS

See Appeal and Error, 20.

GIFTS**I. INTER VIVOS.**

1. Evidence—Weight and sufficiency.

I. INTER VIVOS**1. Evidence—Weight and sufficiency.**

Evidence in a suit to quiet title to land occupied by a joss house held to show a gift of such land to a joss-house society. *Su Lee v. Peck*, 40 Nev. 20; 160 P. 18.

"GOES TO"

See Husband and Wife, 3.

GOVERNOR, LIMITATIONS OF AUTHORITY

See Constitutional Law, 5, 18, 21, 24, 25.

GRAND JURY

1. Number of jurors.
2. Who may serve—"Qualified electors."
3. Selection of jurors.
4. Competency of jurors.
5. Challenge to panel.
6. Waiver of objections to jurors.
7. Powers and duties—Public officers and institutions.
8. Conduct of proceedings.

1. Number of jurors.

Twelve qualified grand jurors are a legal body, and may return an indictment. *State v. Casey*, 34 Nev. 154; 117 P. 5.

That the grand jury was selected from twenty-three instead of twenty-four persons is not ground for challenge. *State v. Bachman*, 41 Nev. 197; 168 P. 733.

2. Who may serve—"Qualified electors."

Under Const. art. 1, sec. 8, art. 2, sec. 1, as amended in 1877, art. 4, sec. 27, Rev. Laws, 4929, 4931, 4937, women, being "qualified electors," may serve on the grand jury. *Parus v. District Court*, 42 Nev. 229; 174 P. 706.

3. Selection of jurors.

The fact that a county commissioner who was blind assisted in selecting the members of the grand jury is not a ground for setting aside an indictment. As with officers, the presumption is that he did his duty, and, in the absence of any showing to the contrary, it must be assumed that the clerk and judge in drawing and certifying to the grand jury did theirs. *Enreka Bank Cases*, 35 Nev. 85; 126 P. 655; 129 P. 308.

Where in drawing, summoning, and impaneling the grand jury there is a substantial compliance with Rev. Laws, 4931, on the part of the designated officers, and where this compliance indicates freedom

from bias or prejudice, an indictment will not be set aside for any technical defect. *Parus v. District Court*, 42 Nev. 229; 174 P. 706.

4. Competency of jurors.

One who bases an opinion as to a crime merely upon rumors and current publications is not disqualified from serving on grand jury, returning an indictment, as to such crime, under Rev. Laws, 7005, subd. 6. *Id.*

Rev. Laws, 7005, provides that a grand juror may be disqualified when a state of mind exists on his part with reference to the case, or to either party, which will prevent him from acting without prejudice to the rights of the challenging party, but that no person is disqualified as a grand juror by reason of having formed or expressed an opinion on the matter submitted, founded on public rumor, statements in the public journals, or common notoriety, provided that it appears by his oath or otherwise that he will, notwithstanding such opinion, act impartially on the matters submitted to him. Held, that a grand juror, who had formed a belief or opinion from statements made to him that defendants were keeping a gambling place, was not disqualified where he further testified that his opinion was not such as would justify him in making a charge against accused. *State v. Williams*, 35 Nev. 276; 129 P. 317.

5. Challenge to panel.

On resubmission of an indictment to the grand jury, accused was "held to answer" within Rev. Laws, 7003, giving a person so held the right to challenge the panel or an individual grand juror. In view of section 7003, providing for retention of custody of accused on resubmission. *State v. Bachman*, 41 Nev. 197; 168 P. 733.

Accused's right to challenge the panel or any individual grand juror was a substantial right. *Id.*

6. Waiver of objections to jurors.

Under Rev. Laws, 7005, permitting an individual grand juror to be challenged on the ground that he is an alien, and section 7010 providing that an accused can take advantage of any objection to the panel or to an individual grand juror "in no other mode than by challenge," an accused waived his right to object that one of the jurors was a resident of another state by waiting until time for pleading to the indictment, more than two weeks after the impaneling of the grand jury, when opportunity was given his counsel to challenge, though accused was not then present. *McComb v. District Court*, 36 Nev. 417; 136 P. 563.

Accused cannot complain of the court's refusal to consider the challenges before the grand jury was sworn, where he failed to take advantage of the ruling of the court that all points that could be raised then might be raised at the proper stage of the proceedings. In view of Rev. Laws, 7090, providing that indictments may be set aside

on motion for any of the grounds which would have been good as challenges either to the panel or to any individual grand juror. *State v. Bachman*, 41 Nev. 197; 168 P. 733.

One held to answer to the grand jury was bound to know the provisions of the code relating to the time challenges must be interposed to the grand jury. *McComb v. District Court*, 36 Nev. 417; 136 P. 563.

7. Powers and duties—Public officers and institutions.

The grand jury being without statutory authority to hire an accountant to audit the books of county officers, the district judge, though required by Rev. Laws, 4924, to charge grand juries as to their duties, part of which section 7028 provides shall be an inquiry into the wilful and corrupt misconduct of public officers, has no inherent authority to engage a private accountant to examine and audit the books of all county officers; it not appearing that there was any reasonable ground to believe that such officers were guilty of misconduct. *Stone v. Bell*, 35 Nev. 240; 129 P. 458.

Rev. Laws, 7028 and 7029, respectively, require the grand jury to inquire into the wilful and corrupt misconduct of public officers, and provide that they may examine all public records, while section 1508 imposes on the board of county commissioners the duty of auditing the accounts of all officers. Sections 4148 and 4153 provide for the appointment of a state auditor who shall at the direction of the governor examine the books and accounts of all county officials. Held that, there being a presumption that public officers performed the duties required of them by law, the grand jury cannot hire an accountant to examine the books of county officials; it being their duty, in case there is reason to believe that the books of the county should be audited, to request either the board of county commissioners or the governor to provide for such audit. *Id.*

8. Conduct of proceedings.

Bringing new indictments after the petitioners have been discharged on habeas corpus, and adding or omitting words in the charging part which cannot be supported by any evidence, does not bring the accused within the jurisdiction of the court, if evidence be heard as directed by the statute and the undisputed facts show that petitioners were not within the jurisdiction of the court and committed no act which the legislature has made punishable. Alleging that they received deposits when the evidence is clear that they were not in the county, nor at the bank, does not give the court jurisdiction to try them, when the statute provides no penalty for their acting as directors and officers of the bank, even if it was insolvent, and when the habeas corpus act directs that testimony be heard and petitioners discharged if it is sought to hold them in a case not provided by law. *Eureka Bank Cases*, 35 Nev. 84; 126 P. 655; 129 P. 308.

It is the commission of an offense within the county which gives the grand jury authority to indict. Under Rev. Laws, 7020, "the grand jury must inquire into all public offenses committed and triable in the jurisdiction of the court." Under sections 7012 and 7013 the foreman and members of the grand jury are required to take an oath to present all offenses "committed and triable within this county of which you shall have or can obtain legal evidence"; and under section 7026, indictment should be found "when all the evidence * * * taken together is such as * * * would, if unexplained or uncontradicted, warrant a conviction by the trial jury." Under these statutory provisions the grand jury has not power to indict without evidence of commission of an act constituting a criminal offense in the county, which would sustain a conviction by a trial jury. *Eureka Bank Cases*, 35 Nev. 82; 126 P. 655; 129 P. 308.

See Indictment and Information, 1, 8.

GRAZING

See Animals, 2.

"GREAT NECESSITY OR EMERGENCY"

See Municipal Corporations, 8.

GROUND FOR CERTIORARI

See Certiorari, 2.

GROUND FOR CONTINUANCE

See Criminal Law, 51.

GROUND FOR DISBARMENT

See Attorney and Client, 2, 3.

GROUND FOR DIVORCE

See Divorce, 2.

GROUND FOR REVIEW

See Appeal and Error, 20, 22.

GUARDIAN AND WARD

IV. SALES AND CONVEYANCES UNDER ORDER OF COURT.

1. Mortgage.

IV. SALES AND CONVEYANCES UNDER ORDER OF COURT

1. Mortgage.

Where guardian of an infant gave a mortgage upon the common property of the infant and the guardian. In order to pay off a mortgage about to be foreclosed, such mortgage was not valid; there being at the time no statute conferring on the court the power to allow the guardian to execute such mortgage. *Laffranchini v. Clark*, 39 Nev. 48; 153 P. 250.

By a divorce decree and also by agreement of the parties, community property

of husband and wife—a house and lot—was "set aside for the use, support, maintenance, and education of the minor children." Held, that the purposes of the trust included any disposition necessary for the support and education of the children, and hence the execution of a mortgage by the guardian for \$3,000 for the purpose of paying off a prior mortgage and saving the property as a home for the children was within the purposes of the trust and authorized. *Schmitt v. Jensen*, 37 Nev. 150; 140 P. 518.

GUARDIAN AD LITEM

See Insane Persons, 2.

GUARDIANS

See Insane Persons, 1; Justices of the Peace, 1.

GUARDIANSHIP

See Habeas Corpus, 10, 14.

HABEAS CORPUS

I. NATURE AND GROUNDS OF REMEDY.

1. Existence of remedy by appeal or writ of error.
2. Nature of restraint or detention—Voluntary surrender or remaining in custody.
3. Proceedings reviewable—Arrest and commitment on criminal charges.
4. Grounds for relief—Want of jurisdiction.
5. Grounds for relief—Excess of jurisdiction.
6. Grounds for relief—Invalidity of proceedings.
7. Grounds for relief—Errors and irregularities.
8. Grounds for relief—Invalidity of statute or ordinance.

II. JURISDICTION, PROCEEDINGS, AND RELIEF.

9. Hearing on petition.
10. Evidence.
11. Dismissal on return—Legal custody.
12. Hearing on writ and return.
13. Scope of inquiry and powers of court.
14. Determination of particular issues or questions—Custody of infants.
15. Determination of particular issues or questions—Arrest and commitment on criminal charges before indictment.
16. Determination of particular issues or questions—Extradition.

I. NATURE AND GROUNDS OF REMEDY

1. Existence of remedy by appeal or writ of error.

Defendant, convicted of obtaining money under false pretenses, having had objections to indictment overruled, was protected by his remedy of appeal, and habeas corpus for his discharge would not lie. In *Re Crane*, 40 Nev. 338; 163 P. 246.

A writ of habeas corpus cannot be used to perform the functions of an appeal or writ of error, but can only review questions going to the jurisdiction of the court to enter the particular judgment, and not as to whether the court erred in the exercise of such jurisdiction. *Ex Parte Davis*, 33 Nev. 309; 110 P. 1131.

The writ of habeas corpus is not designed to interfere with the jurisdiction of any court, nor with the functions of committing magistrates or trial judges in determining as to the guilt of persons charged against whom there is evidence indicating that they have broken the law, nor is it designed to take the place of an appeal. It will seldom issue, but under the constitutional provisions guaranteeing liberty to the citizens and giving the right to the writ, it ought to issue in every case for the discharge of persons accused when it is clear and undisputed that the acts for which they are held are not criminal. *Eureka Bank Cases*, 35 Nev. 82; 126 P. 655; 129 P. 308.

2. Nature of restraint or detention—Voluntary surrender or remaining in custody.

A petitioner for habeas corpus could surrender himself to a sheriff of a county of the state to protect himself from being summarily removed from the state on the requisition of the governor of another state by an agent of such other state without opportunity to appeal to the courts for review of the matters of law pertaining to the extradition, the agent of the other state to petitioner's knowledge having the intent so to remove him; therefore such petitioner was properly in the custody of the sheriff. *In Re Overfield*, 39 Nev. 30; 152 P. 568.

3. Proceedings reviewable—Arrest and commitment on criminal charges.

The indictment is strong presumptive evidence of the truth of the allegations, but it is not conclusive against the objection that the court is without jurisdiction; and the court may consider the evidence and the real facts, the burden of showing which, clearly, in order to overcome the indictment, is upon the petitioners. Unless it appears that no evidence for the consideration of the trial jury can be supplied, indicating that the accused committed the crimes for which they are charged, or if the state can produce any evidence which would support the material allegations of the indictments and sustain a conviction, the indictments would be conclusive to the extent of requiring remanding to custody of the accused for trial, no matter how much evidence the accused may have tending to prove innocence. *Eureka Bank Cases*, 35 Nev. 81; 126 P. 655; 129 P. 308.

Under the clear provisions of the habeas corpus act (Rev. Laws, 6239, 6241, 6242, 6243, 6245), directing that the judge before whom a writ of habeas corpus is returned, shall "proceed to hear and examine the return, and such other matters as may be properly submitted," and "in a summary

way to hear such allegations and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such parties as the justice of the case may require"; and that "such judge shall have full power and authority to require and compel the attendance of witnesses by process of subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case," and "to discharge such party if no legal cause be shown"; that "if it appears on the return of the writ that the prisoner is in custody by virtue of process from any court * * *, or judge or officer thereof, such prisoner may be discharged, * * * first, when the jurisdiction of such court or officer has been exceeded * * * ; fourth, when the process, though proper in form, has been issued in a case not allowed by law * * * ; sixth, where a party has been committed on a criminal charge without reasonable or probable cause," the warrant of a committing magistrate and the bench warrant under an indictment are not final judgments, nor conclusive, and the judge or court hearing an application for a writ of habeas corpus may take or hear evidence against the warrants and indictment, and may discharge the accused when the magistrate, grand jury or court have exceeded their jurisdiction, when the process has been issued in a case not allowed by law, or when the party has been committed on a criminal charge without reasonable or probable cause. *Eureka Bank Cases*, 35 Nev. 80; 126 P. 655; 129 P. 308.

The provision in Rev. Laws, 6244, that it shall be the duty of the "judge to remand the party if it shall appear that he is detained in custody by virtue of a final judgment or decree of any competent court of criminal jurisdiction," implies that he may be discharged in other cases if it appears from the evidence that there is no ground for detaining him. The warrant of the committing magistrate and the bench warrants issued under the indictment are not final judgments, nor conclusive under the provisions of the habeas corpus act. *Id.*

Under the provisions of the habeas corpus act, persons held under an indictment and bench warrant issued under it, are entitled to be released when it is undisputed and clearly appears that they have committed no act which the law declares to be criminal, or if they are held in a case not allowed by law. *Id.*

It is a well-recognized rule that any person charged with felony and bound over by a committing magistrate will be discharged when there is no probable cause for believing that he is guilty of any offense. *Id.*

Acts which the law declares to be criminal are the only ones which constitute crime, or for which a criminal court has jurisdiction to try an accused person. Prosecuting officers and law-abiding citizens cannot properly demand the conviction or

prosecution of persons for the commission of other acts. If they could, no citizen, not even the law-abiding, would be safe. The district court is without original jurisdiction of misdemeanors triable only in the justice's court, and the justice's court is without jurisdiction to try felonies which are triable only in the district court, and both are without jurisdiction to try an accused person for acts which are neither felonies nor misdemeanors, and which do not constitute crime. When a court attempts to punish for the commission of acts which are not criminal by law it goes beyond its jurisdiction into the domain of legislation, which is committed exclusively to another department of government. *Eureka Bank Cases*, 35 Nev. 82; 126 P. 655; 129 P. 308.

4. Grounds for relief—Want of jurisdiction.

Under Rev. Laws, 4926, which provides that when any justice of the peace, through ill health or other cause, is prevented from discharging his duties, he may invite another justice of the same county to attend to such duties, where a justice deemed himself disqualified to try a criminal case and called in another justice, and all parties assumed the request was lawfully made, the latter justice was at least a *de facto* officer, rendering a judgment of conviction valid and not subject to collateral attack on habeas corpus. *Ex Parte Simmons*, 34 Nev. 493; 125 P. 697.

Where petitioner was arrested for violating the initiative prohibition act, and the district attorney elected to have the justice hold a preliminary hearing to bind over, on an original application for writ of habeas corpus to the supreme court, such court will not pass upon the objection that the proceedings were void as conferring upon the district court jurisdiction of a misdemeanor until a court without jurisdiction proceeds to exercise it, since until such time the question is moot. *Ex Parte Ming*, 42 Nev. 472; 181 P. 319.

5. Grounds for relief—Excess of jurisdiction.

Where the evidence without conflict establishes that the defendant belongs to a class not within a penal statute, habeas corpus is available to bring up for determination the court's jurisdiction to render judgment of conviction and to obtain defendant's discharge. *Ex Parte Davis*, 33 Nev. 309; 110 P. 1131.

6. Grounds for relief—Invalidity of proceedings.

The court is without jurisdiction to hold for trial and convict the accused under the provision of an act which has been repealed, and when held for an act which is no longer criminal they are entitled to be discharged upon habeas corpus. *Eureka Bank Cases*, 35 Nev. 85; 126 P. 655; 129 P. 308.

Although no expense, however great, ought to prevent the trial of persons properly charged, against whom there is evi-

dence to sustain a conviction, if it is clear that there is no evidence to sustain a conviction for any offense within the jurisdiction of the court, the accused ought to be discharged before trial to prevent injustice, hardship and expense to them and to the county. *Eureka Bank Cases*, 35 Nev. 84; 126 P. 655; 129 P. 308.

7. Grounds for relief—Errors and irregularities.

The charge of a complaint that accused "did keep and manage the Big Meadow Hotel, a house of public resort, in a disorderly manner," is a sufficient charge, at least against collateral attack of the judgment by habeas corpus, of the offense denounced by Comp. Laws, 4920, of keeping an "inn" in a disorderly manner, as it must be assumed that a "hotel" is an "inn." *Ex Parte Breckenridge*, 34 Nev. 275; 118 P. 687; Ann. Cas. 1914B, 871.

Though a verdict may be so erroneous as to warrant reversal without being entirely void, it will not authorize discharge on habeas corpus of one sentenced thereunder. *Ex Parte Booth*, 30 Nev. 183; 154 P. 933; L. R. A. 1916F, 960.

8. Grounds for relief—Invalidity of statute or ordinance.

In a proceeding in habeas corpus where petitioner seeks to be discharged from arrest on an executive warrant issued by the governor of this state upon extradition papers from the governor of a sister state, the fact that petitioner has been previously discharged by a district court from arrest based upon a mere copy of an alleged indictment found in a foreign state, which copy through clerical error shows that the offense charged is barred by the state of limitations, is of no avail to the petitioner when the extradition papers do not contain such clerical error, but properly charge a public offense committed within the demanding state. *In Re Kuhns*, 36 Nev. 487; 137 P. 83; 50 L. R. A. (N.S.) 507.

II. JURISDICTION, PROCEEDINGS, AND RELIEF

9. Hearing on petition.

In proceedings in habeas corpus disputed questions of fact will not be regarded as controlling. *Id.*

10. Evidence.

On appeal or habeas corpus the supreme court must assume that the magistrate, when committing one accused of crime on preliminary examination, gave credence to any testimony supporting his decision. *In Re Oxley and Mulvaney*, 38 Nev. 380; 149 P. 992.

In habeas corpus for the custody of a minor child held under an agreement by respondents, who were not his parents, with his father, evidence held to show that it is for the benefit of the minor to enforce the agreement. *In Re Swall*, 36 Nev. 171; 134 P. 96; Ann. Cas. 1915B, 1015.

On the application for habeas corpus by persons held on the charge of burglary, evidence by the sole witness against them held not sufficient to show that he was an accomplice. In *Re Bowman and Best*, 38 Nev. 484; 151 P. 517.

Upon a petition for discharge from arrest on a warrant of extradition, evidence as to petitioner's identity with the person wanted in another state held to preponderate in favor of petitioner, and to require his discharge. *Ex Parte Spencer*, 34 Nev. 240; 117 P. 1.

On habeas corpus to secure the release of one convicted of a misdemeanor in district court on appeal from justice court, it will be presumed that the proceedings in the district court were in every way regular until the contrary is made affirmatively to appear. *Ex Parte Murray*, 30 Nev. 351; 157 P. 647.

Where alleged deserted wife by deposition admitted receipt of moneys from husband after date of the desertion and failure to support alleged in the indictment, returned in a foreign state, the husband was entitled to discharge, on writ of habeas corpus, from detention for extradition, since there was no crime as alleged, and he could not be a "fugitive from justice." *Ex Parte Twyeffort*, 42 Nev. 259; 174 P. 431.

The voluntary statement of the petitioner standing in the record uncontradicted, together with other evidence tending to connect him with the death of deceased, held sufficient to warrant the court in denying bail, within Const. art. 1, sec. 7, denying bail in capital cases when the proof is evident or the presumption great. *Ex Parte Nagel*, 41 Nev. 86; 167 P. 689.

11. Dismissal on return—Legal custody.

Though a habeas corpus proceeding is civil in nature, and civil actions are subject to voluntary dismissal, and petitioner for a writ of habeas corpus can dismiss the controversy, he cannot dismiss the proceeding without an order of the court in which the proceeding is pending in regard to their custody or bail. In *Re Smith*, 35 Nev. 30; 126 P. 679.

12. Hearing on writ and return.

After an order in a habeas corpus proceeding discharging the prisoner, a rehearing will not be granted, since this would suspend the former order and result in the rearrest of the prisoner, contrary to the express provisions of the habeas corpus act, sec. 29 (Rev. Laws, 6254). *Eureka Bank Cases*, 35 Nev. 86; 126 P. 655; 129 P. 308.

13. Scope of inquiry and powers of court.

In hearing an application for habeas corpus seeking the petitioner's release from the custody of an agent of another state requisitioning the petitioner as a criminal, the court will go behind the executive warrant of such other state and inquire into the sufficiency of the papers constituting the

requisition. In *Re Overfield*, 30 Nev. 30; 152 P. 568.

A person sought to be extradited may show upon a proceeding in habeas corpus that he is not a fugitive from justice. In *Re Roberson*, 38 Nev. 326; 149 P. 182; L. R. A. 1915E, 691.

The presumption that the allegations of an indictment and of a second indictment, are correct, in the absence of any testimony, may be overcome by clear proof on the part of the accused, uncontradicted by the state, indicating that there is not evidence to sustain the material allegations. *Eureka Bank Cases*, 35 Nev. 84; 126 P. 655; 129 P. 308.

Where by habeas corpus a petitioner seeks release from an executive warrant issued upon the requisition for extradition of the governor of a demanding state, on the ground that he is not a fugitive from justice of the demanding state, the court will inquire into the existence of the facts determinative of that issue. *Ex Parte La Vere*, 30 Nev. 214; 156 P. 446.

14. Determination of particular issues or questions—Custody of infants.

An oral agreement entered into by the father of a minor in California, giving its custody to a third person, is valid and binding on the mother, where the parents had separated by agreement; the custody of the minor having been given to the father. In *Re Swall*, 36 Nev. 171; 134 P. 96; Ann. Cas. 1915B, 1015.

An oral agreement whereby the father of a minor child surrendered its custody to a third person is not void as against public policy, but will be enforced for the benefit of the minor. *Id.*

A writ of habeas corpus for the custody of a minor child held by persons other than his parents will not be denied because it is not held by actual force, but remains with the respondents because of natural inclination. *Id.*

15. Determination of particular issues or questions—Arrest and commitment on criminal charges before indictment.

When on the hearing of the application for writ of habeas corpus the prosecuting witness testifies that he does not know that certain of the petitioners were in Eureka County, and there is positive evidence on their behalf, uncontradicted, that they were not there, and the attorney for the state declined to make any admission, a failure to deny or offer any testimony against the evidence submitted by the petitioners, or to claim that the state could produce any contrary evidence upon a trial, is equivalent to an admission. In view of this, and other undisputed evidence that the petitioners committed no act which is made criminal and punishable in Eureka County, they are entitled to be restored to liberty under the constitutional right to the writ

of habeas corpus. *Eureka Bank Cases*, 33 Nev. 83; 126 P. 655; 129 P. 308.

In a habeas corpus proceeding it is not the province of the supreme court to determine to what extent the direct evidence of the witness given before the examining magistrate was weakened or modified by the cross-examination, since that was the province of the examining magistrate. *Ex Parte Mollino*, 39 Nev. 360; 157 P. 1012.

16. Determination of particular issues or questions—Extradition.

Where in habeas corpus proceedings brought by one held for extradition as a fugitive from the justice of another state the evidence, including that of the complaining witness, shows conclusively that the crime charged could not have been committed, and hence that petitioner could not have been a fugitive from justice, the petitioner will be discharged. *Ex Parte La Vere*, 39 Nev. 214; 156 P. 446.

See Constitutional Law, 16; Criminal Law, 6, 10, 11; Grand Jury, 3, 8; Indictment and Information, 7; Statutes, 1.

"HARBOR AND PROTECT"

See Criminal Law, 4.

HARMLESS ERROR

See Appeal and Error, 29, 110, 112, 113, 118, 119, 122, 125; Criminal Law, 114, 117; Divorce, 25.

HARMONIZING PARTS OF ACT

See Statutes, 34.

HEARING

See Eminent Domain, 11.

HEIRS

See Descent and Distribution, 3, 4.

"HELD"

See Husband and Wife, 3.

HIGH-SCHOOL BUILDING

See Schools and School Districts, 3.

HIGH SCHOOLS

See Statutes, 9.

HIGHWAYS

V. REGULATION AND USE FOR TRAVEL.

(B) *Use of Highway and Law of the Road*.
1. Meeting and crossing.

V. REGULATION AND USE FOR TRAVEL

(B) USE OF HIGHWAY AND LAW OF THE ROAD

1. Meeting and crossing.

The "law of the road" in the United

States is that vehicles, when passing, should turn to the right. *Week v. Reno Traction Co.*, 38 Nev. 287; 149 P. 65.

HOLIDAYS

See Time, 1.

HOME "NEAR" A CITY

See Charities, 3.

HOMESTEAD

I. NATURE, ACQUISITION, AND EXTENT.

(A) *Nature, Creation, and Duration of Estate or Right*.

1. Nature of estate or right.

(C) *Acquisition and Establishment*.

2. Declaration or certificate—Necessity.

II. TRANSFER OR INCUMBRANCE.

3. Joinder of husband and wife in deed or mortgage.

III. RIGHTS OF SURVIVING HUSBAND, WIFE, CHILDREN, OR HEIRS.

4. Continuance or transmission of estate or right.

I. NATURE, ACQUISITION, AND EXTENT

(A) NATURE, CREATION, AND DURATION OF ESTATE OR RIGHT

1. *Nature of estate or right*.

If a declaration of homestead is filed on community property by either spouse, the homestead vests in the survivor on the death of either, and the court must set aside the homestead in community property, even though it was not declared during the life of a deceased spouse; the property being exempt from debts of the surviving spouse or sale under execution. In *Re Cook's Estate*, 34 Nev. 217; 117 P. 27.

The homestead right is purely statutory, not existing at common law. *Id.*

(C) ACQUISITION AND ESTABLISHMENT

2. *Declaration or certificate—Necessity*.

Occupancy by the family is prima facie evidence to third parties of the homestead nature of the premises. *First Nat. Bank v. Meyers*, 40 Nev. 284; 150 P. 308; 161 P. 929.

Const. art. 4, sec. 30, declares that a homestead as provided by law shall be exempt from forced sale, and shall not be alienated without the joint consent of the husband and wife, and that laws shall be enacted providing for the recording of such homestead. Stats. 1864-65, c. 72, provides that a selected homestead shall be exempt from forced sale, and that the selection shall be made by recording intention in writing. Amendment act, Stats. 1897, c. 20, provides that no deed or mortgage of a homestead, whether a declaration has been filed or not, shall be valid, unless both the husband and wife executed and acknowledged the same. Held, that although a homestead was not registered as required by law, the husband's sole conveyance or incumbrance of it did not

affect the wife's right in the homestead, which could not be alienated unless the instrument was executed and given by both. Id.

II. TRANSFER OR INCUMBRANCE

3. Joinder of husband and wife in deed or mortgage.

Const. art. 4, sec. 30, declares that a homestead shall be exempt from forced sale and shall not be alienated without the joint consent of the husband and wife. Stats. 1865, c. 72, sec. 1, passed pursuant to the constitution, provides that a homestead selected by the husband and wife shall be exempt from forced sale, and that the selection shall be made by the recordation of a declaration of intent. Const. art. 4, sec. 31, declares that all property of the wife owned before marriage shall be her separate property. The act of 1873, passed pursuant to the constitution, provides in section 1 (Rev. Laws, 2155) that all property of the wife owned before marriage and acquired thereafter by gift, bequest, devise, or descent is her separate property, and that property similarly acquired by the husband should be his separate property, while section 2 (section 2156) declares that all other property acquired during the marriage shall be the community property. Section 6, as amended in 1897 (section 2160), declares that the husband has entire control over the community property, with absolute power of disposition, but that no deed of conveyance or mortgage of a homestead, regardless of whether a declaration has been filed or not, shall be valid for any purpose, unless both the husband and wife execute and acknowledge it. Held, that though the homestead was not registered as required by law, the husband's sole conveyance or incumbrance of it cannot pass title. *Nat. Bank v. Meyers*, 39 Nev. 235; 150 P. 308.

III. RIGHTS OF SURVIVING HUSBAND, WIFE, CHILDREN, OR HEIRS

4. Continuance or transmission of estate or right.

If a declaration of homestead is filed on community property by either spouse, the homestead vests in the survivor on the death of either, and the court must set aside the homestead in community property, even though it was not declared during the life of a deceased spouse; the property being exempt from debts of the surviving spouse or sale under execution. In *Re Cook's Estate*, 34 Nev. 217; 117 P. 27.

Stats. 1861, c. 55, regulating the settlement of estates, provided in section 123 for the setting aside of the homestead to the widow and minor children, and section 126 provided that if there was no law in force exempting property from execution certain property shall be set aside, including the homestead, as defined in that section. The homestead act of 1865 (Stats. 1864-1865, c. 72), sec. 1, as amended in 1879 (Stats. 1879, c. 131; Comp. Laws, 550), provided that if property declared a homestead be

separate property both must join in the declaration, and if it remain separate property until the death of one spouse, homestead rights therein shall cease, and it shall belong to the party or his heirs to whom it belonged when filed upon; and section 4 (Stats. 1879, c. 131; Comp. Laws, 553) provided that no exemption to the surviving spouse should be allowed, where the homestead declaration had been filed upon the separate property of either spouse, as provided in section 1. The act of 1897, sec. 101 (Stats. 1897, c. 106; Comp. Laws, 2886), authorizes the court, upon the return of the inventory, to set apart for use of decedent's family the homestead as designated by the general homestead law "now in force," whether designated as required by said law or not; and further provides that if the property declared upon be separate property both spouses must join in the declaration, and if it remain separate property until the death of one of them the homestead rights shall cease, and it shall belong to the party to whom it belonged when filed upon. Section 126 of the act of 1861 was omitted from the act of 1897, and section 123, corresponding to section 101 of the latter act, was modified. Held, under section 101, construed with the other statutes, that a widow cannot have set apart to her as a homestead land which was her husband's separate property at his death, and had not been declared on as a homestead; there being other heirs. Id.

See Husband and Wife, 1.

HOME "WORTHY OF ITS NAME"

See Charities, 3.

HOMICIDE

II. MURDER.

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X. APPEAL AND ERROR.

27. Harmless error—Admission of evidence.
28. Harmless error—Instructions.

II. MURDER

1. *Malice*.

While malice and passion may coexist, and a homicide be the result of both, express malice and irresistible passion, as defined in the statute, cannot coexist; premeditation and deliberation being in express malice, and wanting in irresistible passion. *State v. Salgado*, 38 Nev. 413; 150 P. 764.

An instruction was given reading: "And if the jury should find from the evidence the existence of facts and circumstances establishing beyond a reasonable doubt that the defendant had such a reckless disregard of human life as necessarily includes a formed design against the life of Bessie Andy, the killing, if it amounts to murder, would be on express malice, and consequently would be murder of the first degree." Held, erroneous where the facts in evidence showing the manner of the killing are not such of themselves as to establish necessarily a formed design, so as to preclude every other consideration except that of first-degree murder. *State v. Salgado*, 38 Nev. 66; 145 P. 919; 150 P. 764.

An instruction which is the equivalent of saying to the jury: "Nor will the fact that the killing was done without due deliberation, if proven so to have been done, be sufficient to reduce the degree of the offense if the killing was done with deliberate intention," is confusing, contradictory, and erroneous. *State v. Salgado*, 38 Nev. 65; 145 P. 919; 150 P. 764.

An instruction was given defining "irresistible passion" as meaning "that at the time of the act the reason is disturbed or obscured by passion to an extent which might render ordinary men of fair average disposition liable to act rashly, or without due deliberation or reflection, and from passion rather than judgment," followed

with the statement: "Nor will irresistible passion, if proved to have existed, be sufficient to reduce the degree of the offense where the killing was done with express malice, as heretofore defined; under our statute express malice necessarily renders any murder murder of the first degree," express malice having previously been defined in the language of the statute as "that deliberate intention unlawfully to take away the life of a fellow creature which is manifested by external circumstances capable of proof"; held, error, for the reason that the instruction assumes that "irresistible passion" and "express malice" could have coexisted in the case. *Id.*

An instruction erroneously assuming that irresistible passion and express malice may coexist, and, if found to coexist, the element of express malice renders the killing murder in the first degree, is confusing, contradictory, erroneous and prejudicial. *Id.*

Implied malice and sudden passion may coexist, in which case the offense is not reduced to the grade of manslaughter, but is murder of the first or second degree, depending upon the degree of passion. *State v. Salgado*, 38 Nev. 66; 145 P. 919; 150 P. 764.

If irresistible passion is proven to have existed, the homicide could not have been committed with express malice, and would not constitute murder of the first degree. *Id.*

Where it appears from the evidence to the satisfaction of the jury that there are sufficient facts to cause in the defendant a heat of passion insufficient to reduce the crime to manslaughter, but sufficient to prevent the killing from being with that deliberate premeditation required to constitute murder in the first degree, it would be the duty of the jury to bring in a verdict of murder in the second degree. *Id.*

2. *Homicide in commission or intent to commit other offense*.

A killing committed in the perpetration of a robbery is presumed to have been wilful, deliberate and premeditated. *State v. Mangana*, 33 Nev. 511; 112 P. 693.

Section 17 of the crimes and punishments act (Comp. Laws, 4672), making all murder by poison, lying in wait, or torture, or any other kind of wilful, deliberate, and premeditated killing, or committed in the perpetration or attempt to perpetrate any arson, rape, robbery, or burglary, murder in the first degree, does not create separate statutory homicides, but the killing of a human being in either one of the methods described is "murder in the first degree," and a felony and a homicide committed in perpetrating or attempting to perpetrate a felony constitute together the one crime of murder in the first degree. *Id.*

3. *Degrees*.

Deliberation under Rev. Laws, 6384, and Stats. 1915, c. 48, does not of itself constitute an element of either degree of murder.

but simply enters into consideration in determining whether the crime was committed with or without express malice. *State v. Milosovich*, 42 Nev. 264; 175 P. 139.

4. Persons liable.

All persons who are involved in the conspiracy to rob are guilty of murder, if murder is committed by one of the coconspirators in the perpetration of the crime of robbery. *State v. Beck*, 42 Nev. 209; 174 P. 714.

V. EXCUSABLE OR JUSTIFIABLE HOMICIDE

5. Self-defense—Aggression or provocation of attack.

If one makes an attack upon another for the purpose of committing a felony and wreaking his malice upon the person attacked, and the person so attacked makes a counter attack and is slain, the plea of self-defense is not available; but, where the original attack by accused was not with felonious intent, he may plead self-defense. *State v. Huber*, 38 Nev. 253; 148 P. 562.

6. Self-defense—Apprehension of danger.

One attacked by another has the right to use his own judgment in determining what is necessary to repel the attack, and his right to kill his assailant in self-defense cannot be limited by what may appear to the jury to have been absolutely necessary. *State v. Scott*, 37 Nev. 412; 142 P. 1053.

7. Self-defense—Duty to retreat.

Where one, without voluntarily seeking, provoking, inviting, or willingly engaging in a difficulty, is attacked by an assailant, and it is necessary for him to kill the assailant to protect his own life, he need not flee for safety, but may stand his ground and kill the assailant. *State v. Grinnett*, 33 Nev. 531; 112 P. 273.

VI. INDICTMENT AND INFORMATION

8. Assault with intent to kill.

Rev. Laws, 6412, defines an assault as an unlawful attempt, coupled with the present ability, to commit a violent injury. Section 7050 provides that the indictment must contain a statement of the acts constituting the offense, in ordinary language so that a person of common understanding would know what was intended. Held, that an information, alleging that accused on a certain day, "he having the ability then and there so to do, did wilfully, unlawfully, and feloniously" assault another, sufficiently alleged present ability. *State v. MacKinnon*, 41 Nev. 182; 168 P. 330.

9. Issues, proof, and variance.

Under section 17 of the crimes and punishments act (Comp. Laws, 4672), making all murder by poison, lying in wait, or torture, or any other kind of wilful, deliberate and premeditated killing, or that committed in the perpetration or attempt to perpetrate any robbery or other enumerated felony, murder in the first degree, and, under an indictment charging a killing with malice aforethought, accused may be con-

victed of either wilful, deliberate, and premeditated killing, or of a killing committed in the perpetration of a robbery, whether wilful, deliberate, and premeditated or not; but if the indictment should allege that a killing was committed in the perpetration of a robbery, and the evidence should indicate that the killing was premeditated, but not in the perpetration of robbery, the variance would be fatal. *State v. Mangana*, 33 Nev. 511; 112 P. 603.

An indictment for murder committed in the perpetration of a robbery may be charged in the same manner as ordinary murders are charged, and it need not be alleged that the murder was committed in the perpetration of a robbery in order to admit testimony showing that a robbery was committed in addition to the killing. *Id.*

VII. EVIDENCE

(A) PRESUMPTIONS AND BURDEN OF PROOF

10. Intent.

In a prosecution for assault with intent to kill, the specific intent being an element of the offense, no presumption of law can arise which will decide that question; hence a charge that, if accused assaulted another with a deadly weapon in a manner calculated to produce death, the law presumes such was his intention, is erroneous. *State v. Pappas*, 39 Nev. 40; 152 P. 571.

(B) ADMISSIBILITY

11. Character and habits of parties.

The character or reputation of the deceased in homicide cases is to be proven rather by evidence of general reputation of the deceased in the community in which he lived than by particular acts or instances which were not a part of the *res gestæ*, nor connected therewith. *State v. Sella*, 41 Nev. 113; 168 P. 278.

12. Circumstances preceding act.

In a prosecution for murder, exclusion of evidence tending to show that deceased had the reputation of being of a violent, turbulent, and dangerous disposition was erroneous, where defendant had made no assault upon deceased, and where consequently the plea of self-defense was available. *State v. Huber*, 38 Nev. 253; 148 P. 562.

13. Means or instrument used.

In a prosecution for killing by stabbing, evidence that defendant had had in his possession a knife similar to the one found in close proximity to the scene of the stabbing was admissible; objection thereto going rather to its weight than its admissibility. *State v. Salgado*, 38 Nev. 65; 145 P. 919; 150 P. 764.

14. Subsequent incriminating or exculpatory circumstances.

A statement by accused a very short time after the stabbing, which he was seen to do, that he had no knife and had not cut decedent, was admissible as showing a consciousness of guilt. *State v. Salgado*, 38 Nev. 64; 145 P. 919; 150 P. 764.

15. Self-defense—Declarations of deceased.

In a prosecution for homicide, where the defendant, who was the only witness to the shooting, testified that he shot deceased, with whom he was living in adultery, in self-defense, a letter written to him by the deceased a short time before, in which she manifested the strongest affection for him, was admissible as tending to show the improbability of her attacking him. *State v. Skinner*, 37 Nev. 107; 139 P. 773.

Where there is no witness to a homicide other than the defendant who becomes a witness in his own behalf and asserts self-defense and that deceased was the assailant, his version of the killing is subject to be tested by all the physical facts and such evidentiary facts and circumstances as would reasonably tend to throw any light upon the question, such as the relationship and the degree of affection and regard which the parties bore toward each other as bearing upon the question of the probability of who made the first assault. *Id.*

16. Self-defense—Character and habits of person killed or assaulted.

In a prosecution for murder, evidence that the deceased sent the witness an order upon defendant for a certain amount, which the defendant had not paid, was erroneously admitted; since it was immaterial, and tended to prejudice the jury against defendant. *State v. Huber*, 38 Nev. 253; 148 P. 562.

(C) DYING DECLARATIONS**17. Determination of question of admissibility.**

Where the admission of a dying declaration is sought, it is not the province of the court to determine from the preliminary proof whether such declaration has been made, but whether the preliminary evidence warrants its submission to the jury, who are to judge whether the declaration is entitled to weight as a dying declaration. *State v. Scott*, 37 Nev. 412; 142 P. 1053.

(E) WEIGHT AND SUFFICIENCY**18. Corpus delicti.**

The corpus delicti of a murder may be established by inference from facts as well as from positive testimony. *State v. Tranmer*, 39 Nev. 142; 154 P. 80.

In a trial for murder, evidence held sufficient to establish the corpus delicti. *Id.*

19. Malice.

Evidence held sufficient to show malice under Rev. Laws, 6384, and Stats. 1915, c. 48, in a homicide case, although accused had known deceased only a few hours. *State v. Milosovich*, 42 Nev. 264; 175 P. 139.

20. Deliberation and premeditation.

Where death is produced by the common methods of stabbing or shooting, unless accompanied by other peculiar circumstances, the mere fact of stabbing or shooting would not of itself preclude other circumstances negating a formed design against the life of the deceased. *State v. Salgado*, 38 Nev. 66; 145 P. 919; 150 P. 764.

Where death is produced by stabbing, unless accompanied by other peculiar circumstances, the mere fact of stabbing will not preclude other considerations negating a formed design against deceased's life. *State v. Salgado*, 38 Nev. 413; 150 P. 764.

21. Commission of or participation in act by accused.

Deceased was shot by a man nearly 200 feet away, and the witness who was with him jumped and ran to cover. The only evidence that accused was the guilty person was an identification by the witness of a hat which the murderer was wearing. Held, that such evidence was insufficient to support a conviction. *State v. Fronhofer*, 38 Nev. 448; 150 P. 846.

In view of declarations by defendant to a codefendant, evidence held to show that the defendant was a party to a conspiracy to rob the stage, that the stage was robbed, and that in perpetrating the robbery the driver was killed. *State v. Beck*, 42 Nev. 209; 174 P. 714.

22. Self-defense.

Evidence held to show that a killing was committed in self-defense. *State v. Grimmett*, 33 Nev. 531; 112 P. 273.

23. Degree of murder—First degree.

Evidence held to justify a conviction of murder in the first degree either on the ground that the killing was done wilfully, deliberately, and premeditatedly, or on the ground that it was committed in the perpetration of a robbery. *State v. Mangana*, 33 Nev. 511; 112 P. 693.

In a prosecution for homicide, evidence held insufficient to sustain a conviction of murder in the first degree. *State v. Scott*, 37 Nev. 412; 142 P. 1053.

VIII. TRIAL**(C) INSTRUCTIONS****24. Intent, malice, deliberation, and premeditation.**

In prosecution for assault with a deadly weapon, instruction that the law presumes that accused intended to do that which he voluntarily and wilfully did was erroneous. *State v. MacKinnon*, 41 Nev. 182; 168 P. 330.

25. Passion and provocation.

An instruction: "That no provocation can justify or excuse homicide, but may reduce the offense to manslaughter. Words or actions, or gestures, however grievous or provoking, unaccompanied by an assault, will not justify or excuse murder"—was proper, the word "provoke" meaning only to irritate, excite, or enrage. *State v. Milosovich*, 42 Nev. 264; 175 P. 139.

26. Self-defense.

An instruction that self-defense is an affirmative defense and that before the jury can "acquit" on that ground it must appear that the killing of the deceased was "not" in necessary self-defense, is a clear misstatement of the law. *State v. Scott*, 37 Nev. 412; 142 P. 1053.

Self-defense is the right to exercise judgment as a reasonable man in determining.

at the time, whether, from all the attendant circumstances, it was necessary to kill for the protection of one's own life, and it was error to instruct, "Necessity is not for the defendant, but for the jury" to decide. *State v. Combsford*, 41 Nev. 175; 168 P. 287.

X. APPEAL AND ERROR

27. Harmless error—Admission of evidence.

In a prosecution for homicide, where the age of the deceased girl was not a material issue in the case, error, if any, in allowing a witness for the state to answer a question calling for her apparent age, was harmless. *State v. Salgado*, 38 Nev. 64; 145 P. 919; 150 P. 764.

28. Harmless error—Instructions.

Where the evidence was insufficient to justify accused's conviction of murder in the first degree and the court erroneously charged on his contention of self-defense, a conviction of murder in the first degree shows that the charge was prejudicial. *State v. Scott*, 37 Nev. 412; 142 P. 1053.

The evidence in homicide being such as to make important the giving of correct instructions on first- and second-degree murder, instructing that irresistible passion, if proved, will not reduce the offense from first-degree murder, where the killing was done with express malice, was prejudicial. *State v. Salgado*, 38 Nev. 413; 150 P. 764.

Inconsistency of instructions as to the difference between first- and second-degree murder is harmless, where accused is convicted of murder in the second degree. *State v. Milosovich*, 42 Nev. 264; 175 P. 139.

See Criminal Law, 28, 59, 61, 80, 111.

HOUSES OF ILL-FAME

See Constitutional Law, 20; Intoxicating Liquors, 7.

HUSBAND AND WIFE

VII. COMMUNITY PROPERTY.

1. Property acquired during marriage.
2. Property acquired by gift.
3. Rights of husband and wife during existence of community.
4. Sales, conveyances, and incumbrances.
5. Community and separate debts.
6. Dissolution of community.
7. Rights and liabilities of survivor.
8. Administration.

VIII. SEPARATION AND SEPARATE MAINTENANCE.

9. Separation agreements.

XI. CRIMINAL CONVERSATION.

10. Right of action.
11. Evidence.
12. Damages.

VII. COMMUNITY PROPERTY

1. Property acquired during marriage.

A conveyance of property to a wife, consummated before the adoption of the con-

stitution or the enactment of the community estate law (Stats. 1864-65, c. 76), which changed the common law so as to provide that estates acquired by a husband or wife shall be community property, is governed by the rule of the common law, and not affected by the statute. *Winters v. Winters*, 34 Nev. 323; 123 P. 17, 1135.

2. Property acquired by gift.

Where, before the enactment of community estate law (Stats. 1864-65, c. 76), land was purchased by a husband, and by his direction the deed was made to his wife, it is regarded as a gift, and becomes part of the wife's separate estate. *Id.*

Where, before the enactment of the community estate law (Stats. 1864-65, c. 76), a wife purchased land with her money, or land was granted to her by a third person by way of gift, such land becomes a part of her separate estate, subject only to the husband's common-law marital rights. *Id.*

3. Rights of husband and wife during existence of community.

The use of the expression "goes to" the wife in Rev. Laws, 2165, different from the expression "belongs to" the husband in sec. 2164, does not show an intention of the legislature that the interest of the wife in the community should vest only after the husband's death, in view of Const. art. 4, sec. 31, requiring laws to be passed defining the rights of wife to property held in common with her husband, since "held" does not convey the idea of mere expectancy, but imports ownership. In *Re Williams*, 40 Nev. 241; 161 P. 741; L. R. A. 1917C, 602.

4. Sales, conveyances, and incumbrances.

As a general proposition, by reason of the husband's sole right to control the community property, he may alienate during the coverture, without the consent of the wife, any property belonging to the community. *Nat. Bank v. Meyers*, 39 Nev. 235; 150 P. 308.

5. Community and separate debts.

A note, on which a husband became individually liable, given to protect his interest in a mine, is a community obligation, enforceable against the community estate. *Johnson v. Garner*, 233 F. 760.

6. Dissolution of community.

After divorce, the husband, who during the existence of the marriage could incumber and manage the community estate, has no further right to incumber the community property. *Johnson v. Garner*, 233 F. 759.

The Nevada constitution adopted in 1864 defines, in article 4, section 31, what shall constitute the separate property of the wife, and provides that laws shall be passed more clearly defining the rights of the wife to the community as well as to her separate property. Thereafter was enacted Stats. Nev. 1864-65, c. 76, sec. 12, declaring that, in case of dissolution of the marriage by decree of any court of competent jurisdiction, the common property shall be equally divided between the parties, and the court

granting the decree shall make such order for the division of the common property as the nature of the case may require, provided that, when the decree is rendered on the ground of adultery or extreme cruelty, the party found guilty shall be entitled to such portion of the common property as the court granting the decree may deem just and allow. In 1873 this act was repealed, but section 12 was continued, and now appears as Rev. Laws Nev. 2166, declaring that, in case of the dissolution of the marriage, the community property must be equally divided between the parties, and the court granting the decree must make such order for the division of the community property as the nature of the case may require, while that portion of the act of 1873 appearing as section 2188 declares that the rights of husband and wife are governed by the act, unless there is a marriage contract or settlement. Rev. Laws Nev. 5841, enacted in 1861, declares that in granting a divorce the court shall make such disposition of the property of the parties as shall seem just and equitable for the benefit of the children, and that all property and pecuniary rights and interests, and all rights touching the children, their custody and guardianship, not otherwise disposed of, shall, by such divorce, be divested out of the guilty party, and vested in the party at whose instance the divorce was granted. Held, in view of another section of the same act appearing as Rev. Laws Nev. 5843, and declaring that when the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead, but in other cases the court shall set apart such portion for her support and the support of their children as shall be deemed just, and, as the act of 1861 was passed before the creation of community property, effect cannot be given to it, particularly in view of the construction by the California courts of the later statutes, which must be deemed to have been adopted when the statutes were adopted from that state: hence a decree of divorce in favor of the husband for desertion does not, though there was no adjudication as to property rights, deprive the wife of her rights in the community property. *Johnson v. Garner*, 233 F. 756.

A divorce terminates the community estate of the spouses, and thereafter they are tenants in common of such community property, rather than copartners. *Johnson v. Garner*, 233 F. 757.

Before marriage, a husband, to protect community interests in a mining venture, executed a note on which he was personally liable. After divorce, the note was surrendered and the husband executed a new note. The wife was not a party to a judgment recovered by the holder of the notes against the husband. Held that, as the

husband's right to bind the community estate ended with the dissolution of the marriage, and as the old note was surrendered and limitations against its enforcement had run before judgment was recovered on the second note, the wife's share of the community property, which was retained by the husband was not subject to the payment of the second note, though her share of the community was once liable for satisfaction of the original. *Johnson v. Garner*, 233 F. 759.

One who did not make loans to a husband until after divorce is not a community creditor. *Johnson v. Garner*, 233 F. 760.

Where, after divorce, the husband retained control of the property which had been community, expenditures made by him in enhancing the value of the community should be allowed, in the suit by the wife to obtain her share. *Johnson v. Garner*, 233 F. 758.

In such case, though the wife did not assert her rights in the community property for a number of years, yet as the bank, which held both notes, made no attempt to enforce the original note, and received no payments for a number of years, and then accepted the second note, surrendering the original, the wife was not estopped from asserting her rights in the community estate against the bank, for an estoppel cannot arise by reason of mere silence, there being nothing to show that the wife's delay misled the bank. *Johnson v. Garner*, 233 F. 759.

One who made loans to a husband, who was in possession of the entire community estate, after divorce, cannot assert any estoppel against the claim of the divorced wife to her share, where no misrepresentations were made by the wife, and the lender, from the facts in her possession, might have discovered the wife's right; it not appearing that the wife delayed asserting her rights to mislead the lender. *Johnson v. Garner*, 233 F. 760.

Where, to facilitate a divorce, a husband and wife made a settlement which for that reason was void, payments made by the husband under such settlement will be credited against the wife's share of the community estate, not against the whole property. *Johnson v. Garner*, 233 F. 757.

Where, after divorce, the property which had belonged to the community of the spouses was greatly enhanced in value by the efforts of the husband, the husband is entitled to reasonable compensation for his services. *Id.*

7. Rights and liabilities of survivor.

Stats. 1915, c. 130, does not affect or repeal Rev. Laws, 2164, 2165, relating to descent of community property, and where spouse dies intestate all the community property goes to the surviving spouse. In *Re Kattenhorn's Estate*, 41 Nev. 375; 171 P. 164.

8. Administration.

Though a suit by a divorced wife to

recover her share of the property which had composed the community of herself and her former husband was begun first, creditors of the husband, who died pending suit, cannot, having in his lifetime, and after institution of suit by wife, reduced their claims to judgment in the state court, be deprived of the benefit of Rev. Laws Nev. 6052, giving judgments rendered against deceased in his lifetime priority over ordinary demands. *Johnson v. Garner*, 233 F. 758.

Rev. Laws Nev. 6052, declares that the debts of the estate shall be paid: First, the funeral expenses; second, the expenses of the last sickness; third, debts preferred by federal laws; fourth, judgments rendered against the deceased in his lifetime; and, fifth, all other demands against the estate. A husband secured a divorce against his wife, and, there being no adjudication as to the rights of the former spouses with respect to the community property, the husband retained it and also converted to his own use the profits from such community estate. Held, that as the term "debt," used in the statute, signifies no more than a sum of money owing on a contract, express or implied, only the profits of the community estate converted by the husband can be deemed debts, but the husband must be treated as a trustee of the wife's interest in the community property, and as to such she takes priority over creditors who reduced their claims to judgment during the husband's lifetime, while as to the debt for the profits withheld she does not. *Id.*

VIII. SEPARATION AND SEPARATE MAINTENANCE

9. Separation agreements.

Where husband and wife are living separate and apart under a written agreement of separation, there can be no abandonment of the latter by the former. In *Re Kuhns*, 36 Nev. 487; 137 P. 83; 50 L. R. A. (N.S.) 507.

XI. CRIMINAL CONVERSATION

10. Right of action.

In a husband's action for criminal conversation, the issue is whether the wife has been guilty of adultery without his consent or connivance. *Rehling v. Bralnard*, 38 Nev. 16; 144 P. 167; Ann. Cas. 1917C, 656.

11. Evidence.

Evidence in a husband's action for criminal conversation, tried without a jury, held to sustain a judgment for plaintiff. *Id.*

12. Damages.

In a husband's action for criminal conversation, lack of consortium is an element of the damages, but the fact that the breaking up of the home or the destruction of the marital relation has been only partial, and that there has been a reconciliation, may be considered in mitigation of damages. *Id.*

See *Allmony*, 1; *Divorce*, 2, 12, 22, 28; *Homestead*, 1, 4.

IDENTIFICATION

See *Criminal Law*, 28.

ILLEGAL CONSIDERATION

See *Sales*, 3.

ILLEGALITY OF CONTRACT

See *Pleading*, 8.

ILLICIT COHABITATION

See *Marriage*, 3.

ILLICIT OR MERETRICIOUS RELATIONSHIP

See *Trial*, 21.

IMMATERIAL EVIDENCE

See *Appeal and Error*, 119.

IMMUNITY

See *Process*, 7.

IMPEACHMENT

See *Witnesses*, 17.

IMPLIED AUTHORITY

See *Corporations*, 5.

IMPLIED EXCLUSION

See *Intoxicating Liquors*, 4.

IMPLIED REPEAL

See *Divorce*, 23; *Statutes*, 20.

IMPLIED TRUST

See *Trusts*, 2, 3.

IMPOSSIBILITY OF PERFORMANCE

See *Contracts*, 2.

IMPROPER ARGUMENT

See *Appeal and Error*, 23.

IMPROPER EVIDENCE

See *Criminal Law*, 110.

IMPROPER JOINDER

See *Action*, 4.

IMPROPER QUESTION

See *Criminal Law*, 64.

INADVERTENCE

See *Appeal and Error*, 57.

INADVERTENT OMISSION FROM TRANSCRIPT

• See Criminal Law, 95.

INCOME

See Wills, 7, 8.

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See Evidence, 19.

INCONSISTENCE BETWEEN SPECIAL FINDINGS AND GENERAL VERDICT

See Trial, 29.

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See Pleading, 10.

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See Pleading, 3.

INCONSISTENT STATEMENTS

See Witnesses, 17.

INCORPORATION OF REPEALED ACTS

See Statutes, 23.

INDEBTEDNESS

See Municipal Corporations, 8.

INDEPENDENT ACTS

See Waters and Watercourses, 17.

INDETERMINATE SENTENCE

See Criminal Law, 87.

INDIANS

1. Criminal prosecutions.

1. Criminal prosecutions.

A justice of the peace has jurisdiction of a prosecution for violating Stats. 1913, c. 270, sec. 9, making it unlawful to catch or have in one's possession more than a certain amount of fish on any calendar day, although the offense is committed by a white person within the limits of an Indian reservation; the state having control of the fish and game within its boundaries. Ex Parte Crosby, 38 Nev. 389; 149 P. 989.

The rule that state courts have jurisdic-

tion over offenses committed by parties other than Indians on Indian reservations is not affected by a provision in the enabling act for taking account of Indian lands or Indian reservations within the territory, or providing that such Indian lands shall remain under the absolute jurisdiction and control of Congress. Id.

INDICTMENT

See Criminal Law, 10, 81; Extradition, 2; Grand Jury, 6.

INDICTMENT AND INFORMATION**II. FINDING AND FILING OF INDICTMENT OR PRESENTMENT.**

1. Failure to find and resubmission.

V. REQUISITES AND SUFFICIENCY OF ACCUSATION.

2. Subject-matter of allegations—Designation of offense or grade or degree thereof.

3. Statutory offenses — Language of statute.

4. Statutory offenses — Exceptions and provisos.

5. Surplusage and unnecessary matter.

VI. JOINDER OF PARTIES, OFFENSES, AND COUNTS, DUPLICITY, AND ELECTION.

6. Joinder of parties.

VII. MOTION TO QUASH OR DISMISS, AND DEMURRER.

7. Motion to quash or set aside — Grounds.

8. Motion to quash or set aside—Hearing and determination.

9. Motions to dismiss.

XI. WAIVER OF DEFECTS AND OBJECTIONS. AND AID BY VERDICT.

10. Waiver—Objections to indictment or information.

II. FINDING AND FILING OF INDICTMENT OR PRESENTMENT**1. Failure to find and resubmission.**

A qualified grand jury can only consist of members in whose mind there exists no bias or prejudice against either of the parties to the case. State v. Towers, 37 Nev. 94; 139 P. 776; Ann. Cas. 1916D, 269.

Rev. Laws, 7005, subd. 6, allows grand jurors to be challenged because of a state of mind which would prevent them from acting without prejudice to the substantial rights of the challenging party. Section 7390 provides that the court may dismiss an action after indictment, and section 7401 declares that such a dismissal shall not bar another prosecution for the same felony. Section 7044 provides that the dismissal of a charge shall not prevent the same charge from being submitted to a grand jury as often as the court may direct. Section 7101 provides that, if a demurrer to an indictment is allowed, the judgment is a bar to another prosecution, unless the court thinks that the defect may be avoided in a new

indictment, and directs a resubmission to the same or another grand jury; and section 7024 limits evidence receivable by the grand jury to sworn witnesses, legal documentary evidence, and depositions. Defendant was indicted for obtaining money under false pretenses, a felony, and pleaded not guilty, and thereafter the indictment was dismissed, and the matter resubmitted to the same grand jury, who reported "No bill." Subsequently the matter was again resubmitted to the same grand jury, who returned an indictment for felony. Held, that as a reconsideration of the charge or the evidence would be necessary, it could not be resubmitted to the same grand jury, which, having already formed an opinion on the merits, was subject to the challenge that their state of mind prevented them from acting impartially, but that the resubmission must be to another grand jury. *Id.*

V. REQUISITES AND SUFFICIENCY OF ACCUSATION

2. Subject-matter of allegations—Designation of offense or grade or degree thereof

Whether the offense charged be a felony or misdemeanor is to be determined by the indictment's statement of facts and language employed. In *Re Crane*, 40 Nev. 338; 163 P. 246.

3. Statutory offenses—Language of statute.

An indictment charging robbery in the language of the statute is sufficient. *State v. Switzer*, 38 Nev. 108; 145 P. 925.

Embezzlement is a statutory crime, and all that is necessary in charging the offense is to follow the statute. *State v. McFarlin*, 41 Nev. 486; 172 P. 371.

An indictment charging an offense in the language of the statute on which it is based is sufficient, where the statute sets forth, without uncertainty, the elements necessary to constitute the offense. *State v. King*, 35 Nev. 153; 126 P. 880.

In view of Comp. Laws, 4208, providing that the offense charged shall be distinctly set forth in ordinary and concise language, so as to enable a person of common understanding to know what is intended, and the general rule that an indictment charging an offense in the words of the statute is sufficient, an indictment for forgery under Comp. Laws, 4734, providing that every person who shall make, pass, utter, or publish with intent to defraud, any fictitious note, bill or check, shall be deemed guilty of forgery, sufficiently charged the offense by the averment that defendant did "attempt to pass a fictitious check" particularly when the sufficiency of the indictment was not raised until after verdict. *State v. Raymond*, 34 Nev. 198; 117 P. 17.

An information charging mayhem in the language of Rev. Laws, 6416, defining the offense as unlawfully depriving a human being of a member of his body, or disfiguring or rendering it useless, such as slitting the ear, without charging permanent dis-

figurement, which, under section 6418, is necessary to conviction, is nevertheless good in the absence of demurrer. *State v. Enkhouse*, 40 Nev. 1; 160 P. 23.

4. Statutory offenses—Exceptions and provisos.

In an indictment or criminal complaint it is not necessary to allege that defendant is not within an exception specified in the statute. *Ex Parte Davis*, 33 Nev. 309; 110 P. 1131.

5. Surplusage and unnecessary matter.

In view of Rev. Laws, 7052, providing that evidence tending to prove charge need not be stated in the indictment, such allegation will be rejected as mere surplusage. In *Re Crane*, 40 Nev. 338; 163 P. 246.

VI. JOINDER OF PARTIES, OFFENSES, AND COUNTS, DUPLICITY, AND ELECTION

6. Joinder of parties.

Where two persons are jointly charged with grand larceny in preliminary examination, and subsequent to such examination grand jury investigates charge, separate indictments may be filed against the parties. *State v. District Court*, 42 Nev. 219; 174 P. 1023.

VII. MOTION TO QUASH OR DISMISS, AND DEMURRER

7. Motion to quash or set aside—Grounds.

Under the contention that denunciation at a public meeting, in the public press, and in court, of the officers of a bank, by the district judge who ordered and assisted in drawing the members of the grand jury and presided at the time the indictments were found is cause for setting them aside: Held, that generally the prejudice of the judge or bias of the grand jury is not ground for setting aside indictments by writ of habeas corpus. Whether the bias of a judge may be so extreme in any case as to warrant the setting aside of an indictment or discharge on habeas corpus of indicted persons on the theory that the constitution entitles the citizen to release in such a case, not determined. *Eureka Bank Cases*, 35 Nev. 86; 126 P. 655; 129 P. 308.

In extreme cases, when the court can see that the finding of an indictment is based upon such insufficient evidence as to indicate that the indictment resulted from prejudice, or was found in wilful disregard of the rights of the accused, the court should quash the indictment. *Eureka Bank Cases*, 35 Nev. 85; 126 P. 655; 129 P. 308.

Upon a motion to quash, a court can go behind an indictment regular upon its face and determine that it is void for any latent defect. *Id.*

Under sections 7000 and 7005 of the Revised Laws, the indictment may be set aside by the court in which the defendant is arraigned, upon motion, when the defendant has not been held to answer before the finding of the indictment, on the ground that a

state of mind exists upon the part of the grand juror which would prevent him from acting impartially and without prejudice. *Eureka Bank Cases*, 35 Nev. 86; 126 P. 655; 129 P. 308.

8. Motion to quash or set aside—Hearing and determination.

Where accused, in support of his motion to quash the indictment for nonresidence of a grand juror, presented an affidavit on information and belief averring that fact, he could not complain of the presentation by the state of an affidavit of the juror averring his residence and the disposition by the court of the motion on the affidavits, and accused, if desiring the presence of the grand juror, should have subpoenaed him, or taken his testimony by deposition. *State v. Casey*, 34 Nev. 154; 117 P. 5.

Where accused, in support of his motion to quash the indictment for nonresidence of a grand juror, presented an affidavit on information and belief averring that fact, he could not complain of the presentation by the state of an affidavit of the juror averring his residence and the disposition by the court of the motion on the affidavits, and accused, if desiring the presence of the grand juror, should have subpoenaed him, or taken his testimony by deposition. *Id.*

9. Motions to dismiss.

As on the dismissal of an indictment on motion of the district attorney because of a clerical error therein, the failure to order a resubmission of the case to the grand jury did not bar a new prosecution, an order directing the district attorney to take such steps, by indictment and information, as he might deem advisable was not void as divesting the court of its discretion in the premises and imposing such discretion upon the district attorney. *In Re Hironymous*, 38 Nev. 194; 147 P. 453.

XI. WAIVER OF DEFECTS AND OBJECTIONS, AND AIDED BY VERDICT

10. Waiver—Objections to indictment or information.

A judgment entered upon a plea of guilty of petit larceny under an indictment charging grand larceny is void as in excess of the jurisdiction of the court to enter. *Ex Parte Dickson*, 36 Nev. 94; 133 P. 393.

The defect that a complaint, charging the relator with a misdemeanor, was insufficient because purporting to be made upon information and belief, instead of upon positive knowledge, was not jurisdictional, and was waived by relator by pleading to the complaint without making an objection upon the ground assigned. *Ex Parte Murray*, 39 Nev. 351; 157 P. 647.

See Forgery, 1.

INDIVIDUAL JUDGMENT

See Partnership, 4.

INDORSEMENT AND DELIVERY OF NOTE

See Parties, 3.

INDUCEMENT OR PERSUASION

See Criminal Law, 4.

INDUSTRIAL ACCIDENTS

See States, 8.

INEXCUSABLE DELAY

See Equity, 3.

INFANTS

II. CUSTODY AND PROTECTION.

1. Jurisdiction of courts.

II. CUSTODY AND PROTECTION

1. Jurisdiction of courts.

Under the act of 1873 (Stats. 1873, c. 45) as amended by Stats. 1903, c. 41 (Rev. Laws, 4009) relative to the state orphans' home, providing that any district judge upon a showing that an orphan is the child of parents one or both of whom were at the time of their decease residents of the state, and that the condition of the orphan is such that it would be for his best interest to be admitted to such home, may commit the orphan to the home at the expense of the county, and that the directors at their discretion may receive any child from a living resident parent or guardian and require such parent or guardian to contribute to its support, but that no child shall be so received unless sent by the county commissioners of the county in which the child resides, who shall agree to pay for its maintenance, and juvenile court law March 24, 1909 (Stats. 1909, c. 180, sec. 7), as amended by Stats. 1911, c. 197 (Rev. Laws, 734), providing for the commission of dependent and neglected children to any suitable state institution organized for the care of dependent or neglected children, and section 1, under which "dependent and neglected children" include those having immoral, evil, or incorrigible tendencies, the court could not commit to the state orphans' home a dependent or neglected child who was not an orphan, since an "orphans' home" is an institution or home for the care of destitute orphans, and not a "reformatory" or institution in which young offenders are confined and instructed with a view to their reformation. *McKinnon v. Harwood*, 35 Nev. 494; 130 P. 465.

See Guardian and Ward, 1; Habeas Corpus, 10, 14.

INFORMATION

See Criminal Law, 9, 90; Indictment and Information, 1.

INHERENT POWER OF COURT

See Prohibition, 8.

INHERITANCE

See Adoption, 1.

INHERITANCE BY ADOPTION

See Wills, 1.

INHERITANCE TAX

See Taxation, 20.

INITIATIVE AND REFERENDUM

See Mandamus, 4.

INJUNCTION**II. SUBJECTS OF PROTECTION AND RELIEF.****(B) *Property, Conveyances, and Incumbrances.***

1. Property and rights protected.

(G) *Personal Rights and Duties.*

2. Boycotts and other combinations.

3. Criminal acts affecting rights of property.

III. ACTIONS FOR INJUNCTIONS.

4. Parties.

5. Pleading—Demurrer.

6. Evidence—Weight and sufficiency.

IV. PRELIMINARY AND INTERLOCUTORY INJUNCTIONS.**(A) *Grounds and Proceedings to Procure.***

7. Nature and scope of provisional remedy.

(H) *Criminal Acts, Conspiracies, and Prosecutions.*

8. Grounds for denial of temporary injunction.

9. Use and effect of answer.

II. SUBJECTS OF PROTECTION AND RELIEF**(B) PROPERTY, CONVEYANCES, AND INCUMBRANCES****1. Property and rights protected.**

The right to operate a mine and carry on the business of mining therein is a property right whether one owns the mine or not, and he may invoke the powers of a court of equity to protect such right, in a proper case, even though he is not the owner of the mine, or even a stockholder in the company which does own it. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 501.

(G) PERSONAL RIGHTS AND DUTIES**2. Boycotts and other combinations.**

An important element to be considered in determining whether injurious conduct is to be apprehended from a labor union during a strike, which ought to be restrained by injunction, is the character of the dominant faction in such union. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 502.

Striking workmen, who assail nonunion men with threats, ridicule, or insult, or who follow them to or from their work

with vile language and abusive epithets, in order to compel them to quit work, or to refrain from offering to work, are guilty of unlawful conduct. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 501.

Nonunion men have a right to seek employment, to come and go from their work, or to go where they please on the public thoroughfare, without molestation, threats, violence, or insults of any kind, and without being picketed or compelled against their will to listen to persuasion. *Id.*

Workmen, when free from contract obligations, have a legal right, singly, collectively, or as a union, to quit work—that is, to strike—and they have the further right to use such lawful means to make the strike effective as are not inconsistent with the rights of others, and they may endeavor by peaceful argument and persuasion to secure the cooperation of any nonunion men, provided the persuasion is of such a character as to leave the person solicited free to do as he pleases, and he is not persuaded to do that which it would be unlawful for him to do. *Id.*

If, after the miners' union became aware of the fact that the pickets were carrying out a common purpose to intimidate nonunion men in order to compel them to quit work, it still continued to cooperate with and supervise the pickets, it must be held that there was an agreement between the union and the pickets to do an unlawful act. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 502.

Picketing, if confined strictly and in good faith to gaining information and to peaceful persuasion and argument, is not forbidden by law; but when it is used for the purpose of intimidation it is unlawful. The massing of unnecessary numbers of pickets at a point which must be passed by nonunion men, whom the strikers desire to influence, is in itself an act of intimidation. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 501.

Any attempt to intimidate a man in order to compel him to refrain from exercising a legal right is unlawful. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 502.

(H) CRIMINAL ACTS, CONSPIRACIES AND PROSECUTIONS**3. Criminal acts affecting rights of property.**

Where defendants, who pretended to be assayers in a mining district, had purchased large quantities of ore which had been taken from complainant's mines through innumerable thefts committed by their employees with such secret and cunning as to outwit all watching and precaution, complainants had no adequate remedy at law, and were entitled to maintain a suit in equity to restrain defendants from continuing to purchase ore so stolen, notwithstanding such purchase constituted a crime. *Goldfield Con. Mines Co. v. Richardson*, 194 F. 198.

III. ACTIONS FOR INJUNCTIONS**4. Parties.**

Where complainants, who were owners of mines in severalty in a certain district, had long suffered from petty thefts of ore by their employees who had sold the same to defendants, who pretended to be assayers in the district, and a suit to restrain defendants' further purchase of ores, under such circumstances, involved the same question as against all the defendants, complainants were all entitled to join in a single complaint against all the defendants so charged, though there was no concert of action among the defendants in their various purchases, each acting separately for his own benefit. *Id.*

5. Pleading—Demurrer.

A complaint for an injunction is not demurrable where, on any state of proof which its allegations would justify, the court could grant an injunction. *Knox v. Kearney*, 37 Nev. 304; 142 P. 526.

The complaint in an injunction suit was not demurrable, where it set forth a prior vested right, and interference with such right and the injury attendant thereon. *Id.*

6. Evidence—Weight and sufficiency.

Defendant, a miners' union, declared a strike against complainant, which was a mining company, and appointed a committee, with full power to regulate the conduct of the strike. With the knowledge and acquiescence of such committee, if not by its orders, members of the union, to the number of from 30 to 75, or more, gathered each time shifts were changed at complainant's mine, where its employees were compelled to pass, and there was evidence tending to show that they followed such employees, and used abusive and threatening language toward them. It was also shown that complainant was unable to obtain sufficient men because of their fear of the strikers, and that it employed 50 guards at an expense of \$250 per day to protect its property and workmen. It also appeared, from the constitution of the union and from its prior acts, that it was dominated by men who were not inclined to cultivate friendly relations with employers, but rather to promote strife. Held, that such evidence was sufficient to show a conspiracy to subject complainant to unlawful picketing and interference with its business and property by intimidating its workmen, which the union either originated or became party to, and which entitled complainant to relief by injunction against the union and its members. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 502.

IV. PRELIMINARY AND INTERLOCUTORY INJUNCTIONS**(A) GROUNDS AND PROCEEDINGS TO PROCURE****7. Nature and scope of provisional remedy.**

An injunction pendente lite should not usurp the place of a final decree, neither

should it reach out any further than is absolutely necessary to protect the rights of property of the complainant from injuries which are not only irreparable, but which may be expected before the suit can be heard on its merits. It is not necessary that the complainant's rights be clearly established, but it is sufficient if it appears that there is a real and substantial question between parties proper to be investigated in a court of equity, and that in order to prevent irreparable injury to the complainant before his claims can be investigated, it is necessary to prohibit any change in the conditions and relations of the property and of the parties during the litigation. *Goldfield Con. Mines Co. v. Goldfield Miners' Union*, 159 F. 500.

8. Grounds for denial of temporary injunction.

The operation of an order of a governing body charged with the duty of fixing water rates for municipal corporations should not be suspended by the issuance of a temporary injunction, unless complainant furnishes substantial evidence that the rate fixed is confiscatory. *Water Co. of Tonopah v. Public Service Comm.*, 250 F. 304.

9. Use and effect of answer.

Where an answer under oath, denying the equities of a bill, is filed, a temporary injunction cannot be granted on the bill, for the sworn answer is evidence on behalf of the defendant, and rebuts the allegations contained in the bill. *Id.*

See Appeal and Error, 38; Dismissal and Nonsuit, 1; Intoxicating Liquors, 6; Waters and Watercourses, 24.

INJUNCTION AND DAMAGES

See Waters and Watercourses, 26.

INJURIES

See Carriers, 13, 14; Master and Servant, 9, 12, 18, 22, 23, 35; Street Railroads, 2, 3, 4.

INJURIES TO SERVANT

See Master and Servant, 11, 31.

INJURY TO BRAKEMAN

See Master and Servant, 12, 15, 19, 20.

INJURY TO PERSON ON TRACK

See Railroads, 5.

INNOCENCE

See Habeas Corpus, 16.

INNUENDO

See Libel and Slander, 6.

INQUIRY

See Habeas Corpus, 13, 15.

INSANE NONRESIDENT DEFENDANT

See Insane Persons, 2.

INSANE PERSONS

III. GUARDIANSHIP.

1. Appointment, qualification, and tenure of guardian—Proceedings for appointment.

IX. ACTIONS.

2. Appointment of guardian ad litem.

III. GUARDIANSHIP

1. Appointment, qualification, and tenure of guardian—Proceedings for appointment.

Const. art. 6, sec. 4, vests the supreme court with appellate jurisdiction in all cases in equity. Rev. Laws, 4832, is to the same effect. Section 4833 empowers the supreme court to review on appeal a judgment in a proceeding commenced in a district court when the matter in dispute is embraced in the general jurisdiction of the supreme court. Section 5329 provides that an appeal may be taken from a final judgment or special proceeding commenced in the court in which the judgment is rendered. Section 6162 provides for petition for the appointment of a guardian for insane persons. Held, that such proceeding is equitable, and the judgment appointing the guardian for a mentally enfeebled person is final, so that an appeal lies. *O'Donnell v. District Court*, 40 Nev. 428; 165 P. 759.

As procedure under Rev. Laws, 6162, is not a case provided for in civil practice act, secs. 404, 405, 408, and 409 (Rev. Laws, 5346, 5347, 5350, and 5351), the perfection of an appeal by giving the undertaking as prescribed by section 404 stays proceedings in the court below upon the judgment and order appealed from, under specific provision of Rev. Laws, 5355. *Id.*

IX. ACTIONS

2. Appointment of guardian ad litem.

Under Rev. Laws, 4992, as to appointment of guardian ad litem, such appointment may be made for an insane defendant in any case where jurisdiction of the subject-matter has been acquired. *McKibbin v. District Court*, 41 Nev. 431; 171 P. 374.

Under Rev. Laws, 4992, the court may appoint a guardian ad litem for a non-resident insane defendant in a divorce suit; the action being substantially in rem. *Id.*

See Justices of the Peace, 1.

INSANITY

See Criminal Law, 22, 70, 108; Jury, 78.

INSOLVENCY

See Banks and Banking, 4, 8, 9, 13.

INSTRUCTIONS

See Appeal and Error, 110, 122, 124; Criminal Law, 57, 60, 72, 73, 77, 93, 106, 113, 114; Homicide, 26; Master and Servant, 30, 32; Railroads, 6; Trial, 14, 15, 16, 19, 26, 27.

INSTRUCTIONS AS TO COMMON-LAW MARRIAGE

See Trial, 21.

INSTRUCTIONS TO JURY

See Appeal and Error, 80; Criminal Law, 113.

INSTRUMENTS

See Reformation of Instruments, 1.

INSUFFICIENCY OF ALLEGATION OF SPECIAL DAMAGES

See Libel and Slander, 7.

INSUFFICIENCY OF EVIDENCE

See Appeal and Error, 109, 110; Criminal Law, 105.

INSURANCE

XVIII. ACTIONS ON POLICIES.

1. Presumptions and burden of proof.
2. Weight and sufficiency of evidence.
3. Questions for jury.

XVIII. ACTIONS ON POLICIES

1. Presumptions and burden of proof.

There is a presumption against murder or the intentional taking of the life of another as well as against suicide, and if the evidence be such as to warrant the inference either of suicide, murder, or accident, in an action on an insurance policy, the presumption must always be in favor of accident. *Neasham v. New York Life Ins. Co.*, 244 F. 556.

Primarily the presumption is against self-destruction, and it is one of the strongest presumptions with which courts have to deal, and, while it will not prevail against clear and definite proof, suicide will never be inferred if the circumstances are consistent with any other reasonable theory. *Id.*

2. Weight and sufficiency of evidence.

The absence of motive by an insured person for committing suicide, while not conclusive, is a consideration which enters strongly into the sum of the evidence in determining the cause of death. *Id.*

In an action on a life insurance policy defended on the ground that insured committed suicide, verdict of plaintiff held supported by the evidence. *Id.*

3. Questions for jury.

If the circumstances surrounding the death of an insured person are consistent with either murder or suicide, the question must be left to the jury to determine as between the two conflicting causes. *Id.*

INTENDMENT

See Statutes, 28, 33, 37.

INTENT

See Evidence, 26; Homestead, 3; Statutes, 27.

INTENT OF LEGISLATURE

See Statutes, 34.

INTENTION

See Statutes, 24.

INTENTION OF TESTATOR

See Charities, 1, 2, 3; Wills, 2, 3, 4, 5, 7.

INTEREST**I. RIGHTS AND LIABILITIES.****1. Accounts.****I. RIGHTS AND LIABILITIES****1. Accounts.**

In an action on an open account for attorney's fees, plaintiffs cannot recover interest prior to judgment, as provided by Rev. Laws, 2490. *Thompson v. Tonopah L. Co.*, 37 Nev. 184; 141 P. 69.

INTEREST IN LANDS

See Landlord and Tenant, 1.

INTEREST IN PROPERTY FELONIOUSLY ACQUIRED

See Criminal Law, 29.

INTEREST IN REALTY

See Landlord and Tenant, 1.

INTEREST OF DEFENDANT

See Quelling Title, 2.

INTEREST OF WIFE

See Homestead, 2, 3.

INTERMEDDLER

See Subrogation, 1.

INTERMEDIATE INCOME

See Wills, 8.

INTERPLEADER

See Garnishment, 1, 2.

INTERPLEADER PROCEEDINGS

See Judgment, 31.

INTERPRETATION

See Wills, 4.

INTERSTATE COMMERCE

See Carriers, 19; Commerce, 2; Constitutional Law, 20; Courts, 23; Licenses, 4; Taxation, 4.

INTERVENTION

See Eminent Domain, 8; Parties, 2.

INTOXICATING LIQUORS**II. CONSTITUTIONALITY OF ACTS AND ORDINANCES.****1. Prohibition.****IV. LICENSES AND TAXES.****2. Subjects of license tax—Clubs and associations.****3. Fees and taxes—Disposition of moneys collected.****VI. OFFENSES.****4. Liquors prohibited—Description and properties.****5. Illegal possession.****X. ABATEMENT AND INJUNCTION.****6. Nuisance or business subject to abatement or injunction.****XII. RIGHTS OF PROPERTY, AND CONTRACTS.****7. Validity of conveyances and contracts.****II. CONSTITUTIONALITY OF ACTS AND ORDINANCES****1. Prohibition.**

The power exercised through appropriate legislation by the legislature, or people acting in a legislative capacity, to suppress nonintoxicating liquors, is established beyond question, such power being incidental to the power to entirely prohibit traffic in and consumption of, intoxicating liquors. *State v. Reno Brewing Co.*, 42 Nev. 308; 178 P. 902.

Prohibition law, sec. 1, providing that "all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of this act," does not contravene the state or federal constitution. *Id.*

Prohibition act, sec. 7, held not violative of guarantees of Const. U. S. Amend. 14, sec. 1, as to abridging privileges or immunities of citizens of the United States, due process, and equal protection. *Ex Parte Zwissig*, 42 Nev. 360; 178 P. 20.

IV. LICENSES AND TAXES**2. Subjects of license tax—Clubs and associations.**

A bona-fide social club, which disposes, at its clubhouse, of liquors to members and guests at a fixed charge as an incident to the general purposes of the club, the profit on sales going to pay the general expenses of the organization, is not required to take out a license by Rev. Laws, 3377-3785, approved March 15, 1905, which provides for a license upon the business of disposing of intoxicating liquors; the term "business"

in such statute meaning business in the trade or commercial sense. *State v. University Club*, 35 Nev. 475; 130 P. 468; 44 L. R. A. (N.S.) 1026.

3. Fees and taxes—Disposition of moneys collected.

Under Revenue Act of 1915 (Stats. 1915, c. 178), sec. 3, requiring persons disposing of liquor "in less quantities than a quart," in a city, to take out a county license from the sheriff; section 6, requiring persons selling liquor either at retail or wholesale, in addition to other licenses, to take out a state license, section 8 providing for the sheriff, as ex officio collector, issuing and collecting for, a retail liquor license to one engaged in selling liquor in quantities less than five gallons, section 9, requiring one selling liquor in quantities in excess of five gallons to take out a wholesale state liquor license, section 10, providing that monthly the sheriff shall pay to the county treasurer "all" money received by him for state liquor licenses, "in like manner and form as is hereinafter provided for the payment of county license moneys," and that in a county having a city therein he shall pay to it one-half of the "amount" of license moneys collected for disposition of liquors in less quantities than a quart, within its limits, half of the amount from state as well as county licenses for such disposition in quantities less than a quart is to be paid the city, and the balance only to the county treasurer, so that such half payable to the city is not included in "all moneys received" by the county treasurer for state liquor licenses "in accordance with the provisions of this act," for which section 11 requires him to account to the state treasurer, the word "amount" in section 10, referring to the total of two sums (citing Words and Phrases, Second Series, Amount). *State v. Hill*, 40 Nev. 110; 160 P. 772.

VI. OFFENSES

4. Liquors prohibited—Description and properties.

The sentence, "and all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of this act," in prohibition law, sec. 1, cannot be adjudged out of the act, or restricted or enlarged in its plain signification, unless, after exhausting every legitimate method of construction, it is found irreconcilable with the scope and purpose of the act or void for constitutional reasons. *State v. Reno Brewing Co.*, 42 Nev. 397; 178 P. 902.

"Sierra Beverage," containing malt and one-tenth per cent alcohol, is, whether intoxicating or not, a liquor, within prohibition law, sec. 1, providing that "all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of this act." *Id.*

The phrase, "any other intoxicating drink, mixture or preparation of like nature," which follows the specific enumeration of certain named liquors in prohibition law, sec. 1, instead of limiting the class of liquor enumerated, described another merely by

their intoxicating quality. *State v. Reno Brewing Co.*, 42 Nev. 398; 178 P. 902.

The phrase, "any other intoxicating drink, mixture or preparation of like nature," which follows the specific enumeration of certain named liquors in prohibition law, sec. 1, is not controlled or qualified by the last clause of said section with reference to beverages containing one-half per cent alcohol being spirituous liquors. *Id.*

5. Illegal possession.

Prohibition act, sec. 7, was intended to prevent a person from having intoxicating liquor upon the street for personal or any other use other than contemplated by the act itself. *Ex Parte Zwissig*, 42 Nev. 360; 178 P. 20.

X. ABATEMENT AND INJUNCTION

6. Nuisance or business subject to abatement or injunction.

The term "intoxicating liquors," as used in prohibition law, sec. 14, making places where such liquors are manufactured, stored, sold, etc., public nuisances, is, when said section is considered together with sections 6 and 17, to be taken as used interchangeably with the word "liquors" in section 1, and district court had jurisdiction to enjoin defendant brewing company from manufacturing and selling "Sierra Beverage," although said beverage is not intoxicating. *State v. Reno Brewing Co.*, 42 Nev. 398; 178 P. 902.

XII. RIGHTS OF PROPERTY AND CONTRACTS

7. Validity of conveyances and contracts.

A note for balance of indebtedness for liquors sold and delivered to the maker, engaged in conducting a house of ill-fame within the restricted distance from a church, was not invalid, though the seller knew the liquors would be resold upon the premises; there being nothing unlawful in the sale nor any law prohibiting sale of liquors at such house, since the buyer had a license to sell liquor there. *Loose v. Larsen*, 40 Nev. 157; 161 P. 514; L. R. A. 1917B, 1166.

INTOXICATION

See Acknowledgment, 1; Mortgages, 2.

INVALIDITY

See Statutes, 3.

IRREGULARITIES IN EXERCISE OF INHERENT AUTHORITY

See Prohibition, 8.

IRREVOCABLE LICENSE

See Licenses, 5; Waters and Watercourses, 18, 22.

IRRIGATION

See Waters and Watercourses, 6, 7, 9, 10, 11, 12, 22, 23, 26.

ISSUES

See Pleading, 24.

ITEMS OF COST

See Costs, 6, 17.

JEOPARDY

See Criminal Law, 13.

JITNEY BUSES

See Licenses, 2, 3; Municipal Corporations, 6.

JOINDER OF CAUSES OF ACTION

See Action, 2, 3, 4.

JOINDER OF SEPARATE CAUSES OF ACTION

See Action, 2.

JOINT ADVENTURES

1. Nature, creation and existence of relation.
 2. Mutual rights, duties and liabilities of parties.
 3. Mutual rights, duties and liabilities of parties—Actions between parties.
1. Nature, creation, and existence of relation.

A contract of joint adventure is sufficiently supported by a consideration growing out of the mutual promises of the parties. *Walser v. Moran*, 42 Nev. 497; 181 P. 437.

Where parties agreed to use their joint efforts to acquire mining property in equal interest and to convey the title thereto to a corporation to be formed by them for the purpose of taking over the property, the acquirement of the claims being the primary purpose of the agreement, there was a contract of joint adventure, consummated when the minds of the parties met and they made mutual promises to contribute certain money and services. *Id.*

The furnishing of capital by the parties to a joint adventure is not essential to the validity of the contract if the original agreement is carried out. *Botsford v. Van Riper*, 33 Nev. 156; 110 P. 705.

Plaintiff's suggestion to defendant of a scheme for merging properties and advice and counsel to him, and the mutual promise of assistance in promoting the venture, were sufficient consideration to sustain an agreement for an equal division of the profits of the venture, though defendant agreed to do all the other work. *Id.*

The legal principles governing partnerships apply generally to joint adventures. *Id.*

The profits of a joint adventure may consist of the unsold portion of the property which was the subject of the venture, or

property received as compensation for services rendered in connection with the venture, as well as money. *Id.*

2. Mutual rights, duties, and liabilities of parties.

A party to a joint adventure holding the profits may be compelled to account to his associates for their share of the property representing such profits in kind. *Id.*

Advances by one party to a joint adventure are loans to the venture for which he is entitled to reimbursement from the proceeds of the venture, but they give him no other superior rights against his associates. *Id.*

In the absence of an express agreement to the contrary, equal division of the profits of a joint adventure is implied, regardless of inequality of contribution. *Id.*

Even though W. believed that he had a right to terminate the agreement and thereafter to acquire for himself interests which he had examined on the trip, equity will not permit him to deprive his associates of their share of whatever he acquired as a result of that trip. *Lind v. Webber*, 34 Nev. 623; 134 P. 461; 135 P. 139; 141 P. 458; 50 L. R. A. (N.S.) 1046.

Four individuals entered into an agreement to send W., one of their number, to examine a new mining district and locate any valuable rights; the expenses of the trip to be shared equally by the parties. W. located four claims in the name of one of the other parties to the agreement. On the trip he met other miners, and after his return he terminated the agreement, and on the same day and without consideration he secured for himself and one of the other parties to the joint agreement, from those whom he had met on the trip, interests in some claims which they had located while all were together. Held, that the other two parties to the joint agreement were entitled to share in the profits from the claims so acquired through the examination and trip made under the joint agreement. *Id.*

The relation between the parties to a joint adventure is fiduciary, and the utmost good faith is required of the trustee to whom matters may be intrusted; he not being entitled to any advantage over his associate on account of possession of property or profits. *Botsford v. Van Riper*, 33 Nev. 157; 110 P. 705.

That plaintiffs and defendant agreed to use their joint efforts to secure an option on certain property and to sell the same, defendant to be the active agent of the venture, that plaintiffs assisted in furthering the venture by counsel, introductions, and personal efforts, that it was agreed that the parties should share equally in the profits, that the venture was successful and defendant was to receive stock of a specified value as compensation, that he was attempting to get possession of all the stock and refused to recognize plaintiffs' rights to any interest in the proceeds of the venture, and

that he was outside the state and insolvent, shows plaintiffs' right to recover equal interests in the proceeds under the doctrine of joint adventure. *Id.*

That the active agent of a joint adventure did not call upon his associates for the aid they agreed to give does not affect their right to share in the profits. *Id.*

Where, except for temporary advances, the proceeds from the claims acquired by W., as a result of his trip under the joint agreement, were sufficient to acquire adverse interests and develop the property, the other parties to the joint agreement did not lose their right to share in the profits by their failure to contribute to such advances for which no demand was ever made upon them. *Lind v. Webber*, 36 Nev. 623; 134 P. 461; 135 P. 139; 141 P. 458; 50 L. R. A. (N.S.) 1046.

Since the joint agreement specified no time for its continuance, W. had a right to terminate it upon his return from the trip, and any rights acquired as a result of the subsequent trips would be his alone; but the termination did not affect rights acquired as a result of the trip made under the joint agreement. *Id.*

Where property or profits are acquired under a joint adventure, a party holding title to the same is a trustee for his associates as to their proportionate shares. *Botsford v. Van Riper*, 33 Nev. 156; 110 P. 705.

Where several parties entered into an agreement to acquire mining property in equal interest and to convey the title thereto to a corporation to be formed by them for the purpose of taking over the claims, one party to furnish certain amount of money and another to examine the claims and ascertain as to whether or not they had any value, the relation created laid upon the one examining the claims a strict duty to deal fairly with the other members, and to give the other members a chance to perform upon having discovered that the claims were of great value, and he could not foreclose their rights to share in the property and profits by advancing the necessary money himself. *Miller v. Walser*, 42 Nev. 498; 181 P. 437.

Where an agreement was entered into to acquire mining claims in equal interest, one party to furnish money and another party to contribute his services and experience in inspecting the claims, money advanced by the one inspecting the claims to purchase the same, not giving the person who was to contribute the money a chance to participate, will be considered in the nature of a loan to the joint adventure, and for the benefit of all the joint adventurers. *Id.*

3. Mutual rights, duties, and liabilities of parties—Actions between parties.

Where the other parties knew in a general way that W. was interested in some other claims in that mining district, but did not know the circumstances under

which he had acquired that interest, their delay in instituting a suit for an accounting did not amount to laches. *Lind v. Webber*, 36 Nev. 623; 134 P. 461; 135 P. 139; 141 P. 458; 50 L. R. A. (N.S.) 1046.

Associates of the trustee of a joint adventure can recover from him for any breach of his trust. *Botsford v. Van Riper*, 33 Nev. 156; 110 P. 705.

While a party to a joint adventure may sue his associate at law for breach of the contract or a share of the profits or losses, or contribution for advances in excess of his share, such remedies do not preclude a suit in equity for an accounting. *Id.*

One party to a joint adventure may set off against the demand of another advances or payments in behalf of claimant, and hence, in an action to recover an interest in the proceeds of a venture, expenditures by defendant were properly deducted from recovery awarded against him. *Id.*

Mere fact that mining property has advanced considerably in value should not bar recovery, under the doctrine of laches, by a member of a contract of joint adventure, where the plaintiff was prevented from contributing his share through the fraud and concealment of the other members, and is seeking an accounting. *Miller v. Walser*, 42 Nev. 499; 181 P. 437.

One member to a contract of joint adventure may sue the other at law for a breach of the contract, or he may bring suit in equity for an accounting. *Miller v. Walser*, 42 Nev. 498; 181 P. 437.

See Limitation of Actions, 2, 4; Trusts, 3.

JOINT AND SEVERAL JUDGMENT

See Judgment, 14.

JOINT CHARGE

See Criminal Law, 15.

JOINT CONSENT

See Homestead, 2, 3.

JOINT INDICTMENT

See Criminal Law, 55.

JOINT PRINCIPAL

See Criminal Law, 43; Witnesses, 11.

JUDGES

III. RIGHTS, POWERS, DUTIES, AND LIABILITIES.

1. Compensation and fees.

III. RIGHTS, POWERS, DUTIES, AND LIABILITIES

1. Compensation and fees.

Though a townsite trustee became such by virtue of his office as district judge, the compensation allowed under the statute

for his services as trustee is not a fee or perquisite of the office of district judge within section 10, article 6, of the constitution, forbidding a judicial officer, other than justices of the peace or city recorders, from receiving to his own use any fees or perquisites of office. *Jennett v. Stevens*, 34 Nev. 128; 116 P. 601.

Since the duties of townsite trustee do not naturally belong to the office of district judge, and it is not incumbent upon a district judge to accept such trust, he may accept compensation for his services as trustee. *Id.*

General revenue act (Rev. Laws, 3623), section 7, provides that the board of county commissioners of each county shall cause to be prepared suitable books for the use of the assessor, in which he shall enter his tax list and assessment roll as thereafter provided, and in that list and roll shall be assessed and included all taxes levied by authority of law for county purposes, the book to contain suitable printed heads and be ruled to conform with the form of the assessment roll as provided by the act. Section 4902 declares that each county in each district in the state shall contribute annually to the fund required to pay the salary of the district judge its proportionate share of the money necessary to pay such salary, based on the assessment roll of each county for the previous year. Held, that the term "assessment roll," as used in section 4902, means the whole roll for the assessment of taxes, including not only the assessment of real and personal property mentioned in Rev. Laws, 3633, but the assessment of the proceeds of mines mentioned in Rev. Laws, 3696, as well. *Esmeralda County v. Mineral County*, 37 Nev. 180; 141 P. 73.

See Criminal Law, 82; False Imprisonment, 1, 2.

JUDGMENT

I. NATURE AND ESSENTIALS.

1. Process or notice to sustain judgment.
2. Evidence to sustain judgment.
3. Effect of invalidity—Partial invalidity.

IV. BY DEFAULT.

(A) *Requisites and Validity.*

4. Default in pleading—Failure to plead.
5. Taking or entry of default.

(B) *Opening or Setting Aside Default.*

6. Discretion of court.
7. Invalidity of judgment.
8. Meritorious cause of action or defense.
9. Time for application.
10. Affidavits on application and merits.
11. Counter affidavits and other evidence.
12. Conditions on granting application.
13. Dismissal of action, nonsuit or direction of verdict.

VI. ON TRIAL OF ISSUES.

(B) *Parties.*

14. Joint or several judgment.

(C) *Conformity to Process, Pleadings, Proof, and Verdict or Findings.*

15. Conformity to pleadings and proofs—Prayer for relief.

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16. Entry nunc pro tunc.
17. Judgment roll or record—Matters included.

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18. Authority of court, judge or judicial officer.

IX. OPENING OR VACATING.

19. Statutory provisions.

X. EQUITABLE RELIEF.

(B) *Jurisdiction and Proceedings.*

20. Evidence.

XI. COLLATERAL ATTACK.

(B) *Grounds.*

21. Invalidity of judgment.
22. Want of jurisdiction—Presumptions as to special, limited, or inferior jurisdiction.
23. Errors and irregularities—Irregularities in proceedings.

III. MERGER AND BAR OF CAUSES OF ACTION AND DEFENSES.

(A) *Judgments Operative as Bar.*

24. Judgment on motion or summary proceeding.
25. Judgment on discontinuance, dismissal or nonsuit.

XIV. CONCLUSIVENESS OF ADJUDICATION.

(B) *Persons Concluded.*

26. Identity of persons.
27. Privity.
28. Successive estates or interests.
29. Persons not parties or privies.

(C) *Matters Concluded.*

30. Scope and extent of estoppel.
31. Matters not in issue.

XVII. FOREIGN JUDGMENTS.

32. Judgments of state courts—Want of jurisdiction.
33. Judgments of state courts—Enforcement, in other states.

XIX. SUSPENSION, ENFORCEMENT, AND REVIVAL.

34. Proceedings to revive judgment.

XXII. PLEADING AND EVIDENCE OF JUDGMENT AS ESTOPPEL OR DEFENSE.

35. Allegations, admissions, and denials.
36. Issues, proof and variance.
37. Trial and review.

I. NATURE AND ESSENTIALS

1. Process or notice to sustain judgment.

Process cannot run beyond the borders of the state, and a constructive service by

publication or personal service on a non-resident will not support a decree in personam, though it may support a decree affecting property within the state where process is issued. *Keenan v. Keenan*, 40 Nev. 352; 164 P. 351.

As a general rule a valid judgment in personam cannot be rendered against a defendant, except after his voluntary appearance or the personal service of process within the territorial jurisdiction of the court. *King Tonopah M. Co. v. Lynch*, 232 F. 486.

2. Evidence to sustain judgment.

Judgment cannot be based upon assumptions or upon conclusions reached by "guess," but must be sustained by facts shown by the evidence or admitted by the party to be bound. *Richards v. Vermilyea*, 42 Nev. 204; 175 P. 188; 180 P. 121.

3. Effect of invalidity—Partial invalidity.

That counsel for a mortgagee, who was a director of the defendant mortgagor, took a judgment in favor of himself for counsel fees against the mortgagor, did not invalidate the foreclosure judgment, though the judgment for counsel fees was void. *Nev. Con. M. Co. v. Lewis*, 34 Nev. 500; 126 P. 105.

IV. BY DEFAULT

(A) REQUISITES AND VALIDITY

1. Default in pleading—Failure to plead.

Under Rev. Laws, 5236, providing that, in an action upon contract for the recovery of money or damages only, if no answer has been filed within the time specified in the summons or such further time as may have been granted, the clerk on plaintiff's application shall enter defendant's default and immediately thereafter enter judgment against defendant, and that the word "answer" as used therein shall include any pleading that raises an issue of law or fact, whether it be by general or special appearance, while the filing of a demurrer is equivalent to the filing of an answer in preventing a default, where a demurrer to the complaint was sustained and a demurrer to an amended complaint was overruled, the demurrers had served their purpose and had no further effect, and upon defendant's failure to answer within the time allowed by the court the clerk could enter judgment by default. *Esden v. May*, 36 Nev. 611; 135 P. 1185.

5. Taking or entry of default.

Where a married woman sued to recover property held by her husband in trust for her from persons who had obtained it from her husband at a gambling game while he was intoxicated, the action being one on implied contract and not for a tort or for an uncertain sum or for relief requiring the exercise of judicial discretion, a default judgment was properly entered by the clerk. *Esden v. May*, 37 Nev. 305; 142 P. 530.

Rev. Laws, 5236, subd. 3, providing that, in actions where service is by publication,

the plaintiff upon the expiration of the time within which the defendant is required to answer may apply for judgment, and the court shall thereafter require proof of publication, does not govern in actions where personal service is had upon a non-resident, even though the statute declares such service equivalent to publication, for there could be no proof as in case of publication, and the obvious intent of the statute was to protect the rights of nonresidents; hence a default in such case may be entered by the clerk. *Long v. Tighe*, 36 Nev. 129; 133 P. 60.

(B) OPENING OR SETTING ASIDE DEFAULT

6. Discretion of court.

While the granting or denying of a motion to open a default on the ground of inadvertence or excusable neglect is within the discretion of the trial court, it is a legal discretion to be exercised liberally in the interest of justice. *Esden v. May*, 36 Nev. 612; 135 P. 1185.

7. Invalidity of judgment.

An action in equity will lie to set aside a judgment which is procured by fraud. *Boyce v. Third Chance M. Co.*, 36 Nev. 53; 133 P. 397.

A president of a corporation cannot take advantage of his position to gain a private benefit. Equity will decree a benefit gained by such fiduciary relation to inure to the benefit of the corporation or its stockholders. *Id.*

8. Meritorious cause of action or defense.

Under Rev. Laws, 5084, providing that the court may "in furtherance of justice" amend any pleading, etc., and that it may, upon such terms as may be just, relieve a party from a judgment taken against him through his mistake, inadvertence, surprise, or excusable neglect, a default judgment cannot be set aside on the ground of excusable neglect unless a meritorious defense be shown. *Esden v. May*, 36 Nev. 612; 135 P. 1185.

Where proper service was had, equity will not set aside a default judgment for fraud in obtaining it, in the absence of a showing of a meritorious defense. *Nev. Con. M. Co. v. Lewis*, 34 Nev. 500; 126 P. 105.

A court of equity may set aside a default judgment where fraud was practiced in the very matter of obtaining the judgment, although no meritorious defense to the original action was shown; since in such case the fraud is regarded as having been practiced on the court as well as on the injured party. *Id.*

A court of equity will not, as a general rule, set aside a judgment regularly obtained by default, in the absence of a showing of a good and meritorious defense to the original action. *Id.*

That counsel for a mortgagee, who was

a director of the defendant mortgagor, took a judgment in favor of himself for counsel fees against the mortgagor, did not invalidate the foreclosure judgment, though the judgment for counsel fees was void. *Id.*

9. Time for application.

Rev. Laws, 5048, providing that when summons and copy of complaint have not been personally served, court may allow defendant within six months to answer to merits, was made to cover cases only in which there was valid service by publication. *Perry v. District Court*, 42 Nev. 284; 174 P. 1058.

10. Affidavits on application and merits.

The affidavit of defendant's counsel to open a default and set aside the judgment, that he is familiar with the defense to be interposed in this action and believes it to be good and meritorious, is an insufficient showing. *Sherwin v. Sherwin*, 33 Nev. 321; 111 P. 286; 122 P. 481; Ann. Cas. 1914A, 108.

11. Counter affidavits and other evidence.

On an application to set aside a default judgment on the ground of excusable neglect, the affidavit and testimony of defendant's counsel that in his opinion a good and meritorious defense existed was not a sufficient showing of a meritorious defense, especially where the action was by a married woman to recover property held by her husband in trust for her from persons who obtained it from the husband at a gambling game while he was intoxicated, since the nature of the action was such as to require a clear showing of merits. *Esdlen v. May*, 36 Nev. 612; 135 P. 1185.

12. Conditions on granting application.

B., as plaintiff, brought action against defendant corporation, of which he was the president, and recovered judgment. B., as judgment creditor, then redeemed property of defendant corporation sold upon execution under a judgment previously obtained against defendant corporation in favor of A. M. A., father of A., and other stockholders of defendant corporation, intervened and moved to set aside the judgment in favor of B., upon the ground of fraud in its procurement. B., consenting thereto, and interveners not objecting, the court made an order, that the judgment in favor of B. would be set aside providing the property sold upon A.'s judgment was redeemed in favor of the corporation prior to the expiration of the last day for such redemption, and continued the hearing until such last day. No redemption in favor of the corporation from the A. judgment having been made within the time prescribed in the order and it appearing that no such redemption would be made, the motion to set aside the judgment in favor of B. was denied, and further hearing upon the motion to set aside was also denied. Held, that the orders of the court were not erroneous. *Boyce v. Third Chance M. Co.*, 36 Nev. 53; 133 P. 397.

13. Dismissal of action, nonsuit, or direction of verdict.

Judgment reading, "And now all and singular in the premises being seen, heard and fully understood, and the material facts alleged in the libel not sufficiently proved to the satisfaction of the court, said libel is denied." indicates, not an abandonment of the cause by plaintiff, the essential at common law of a nonsuit, but that the cause was submitted and determined on the merits. *Danforth v. Danforth*, 40 Nev. 435; 166 P. 927.

VI. ON TRIAL OF ISSUES

(B) PARTIES

14. Joint or several judgment.

In view of Rev. Laws, 5004, 5240, and 5241, a joint and several judgment in action on bond against the executor of deceased surety and the surviving surety was not erroneous because against one *de bonis propriis*, and against the other *de bonis testatoris*. *Pruett v. Caddigan*, 42 Nev. 329; 176 P. 787.

(C) CONFORMITY TO PROCESS. PLEADINGS, PROOFS, AND VER- DICT OR FINDINGS

15. Conformity to pleadings and proofs— Prayer for relief.

Where, in an action to recover certain mines, plaintiffs sought to have the contract under which they claimed specifically enforced, and also asked for general relief, the court had jurisdiction to decree an accounting under a statute providing that, where parties appear, the court may grant any relief consistent with the case made by the complaint and embraced within the issue. *Silver Peak Mines v. District Court*, 33 Nev. 97; 110 P. 503; 29 Ann. Cas. 587.

VII. ENTRY, RECORD, AND DOCKETING

16. Entry *nunc pro tunc*.

The object and purpose of a *nunc pro tunc* order is to make the record speak the truth concerning acts already done, and not to supply an omitted action. *Talbot v. Mack*, 41 Nev. 245; 169 P. 25.

17. Judgment roll or record—Matters included.

A judgment roll includes the pleadings and judgment. *Glock v. Elges*, 39 Nev. 415; 159 P. 629.

VIII. AMENDMENT, CORRECTION AND REVIEW IN SAME COURT

18. Authority of court, judge or judicial officer.

Since terms of court are abolished, a judgment can be set aside or amended only as provided by Rev. Laws, 5084, except for fraud, etc. *Sweeney v. Sweeney*, 42 Nev. 431; 179 P. 638.

IX. OPENING OR VACATING

19. Statutory provisions.

Comp. Laws, 3163, permitting the court,

in furtherance of justice, upon just terms, to relieve a party from a judgment, order, or other proceeding taken against him through mistake, inadvertence, surprise, or excusable neglect, should be very liberally construed in furtherance of its purpose. *Whise v. Whise*, 36 Nev. 16; 131 P. 967; 44 L. R. A. (N.S.) 689.

X. EQUITABLE RELIEF

(B) JURISDICTION AND PROCEEDINGS

20. Evidence.

Evidence, in an action to set aside a default judgment foreclosing a mortgage given by plaintiff company to defendant, on the ground of fraud in obtaining the judgment, held sufficient to support a finding that the summons and complaint were duly and regularly served upon the company in the foreclosure suit; that the judgment was regularly and legally obtained; and that defendant had no good or meritorious defense thereto. *Nev. Con. M. Co. v. Lewis*, 34 Nev. 500; 126 P. 105.

XI. COLLATERAL ATTACK

(B) GROUNDS

21. Invalidity of judgment.

A void judgment may be collaterally attacked. *Long v. Tighe*, 36 Nev. 129; 133 P. 60.

22. Want of jurisdiction—Presumptions as to special, limited, or inferior jurisdiction.

Plaintiff in an action to foreclose a mortgage failed to file any affidavit that all taxes on the money or debts secured had been paid, as required by Rev. Laws, 3756, which also provided that on motion of defendant the court should stay proceedings until such affidavit was filed or proof of payment of such taxes made, and that the court, before entering judgment should require such affidavit or proof. Held, in the absence of a provision making a judgment void for failure to comply with the statute, that its purpose was only to aid in the enforcement of other tax laws, and that, as the objection went neither to a question of fraud upon the court nor the defendant mortgagor, it was not ground for setting aside a default judgment therein. *Nev. Con. M. Co. v. Lewis*, 34 Nev. 501; 126 P. 105.

23. Errors and irregularities—Irrregularities in proceedings.

A collateral attack upon a judgment is only permissible when the judgment is void for want of jurisdiction, and not if the court merely errs in some ruling. *Daly v. Lahontan Mines Co.*, 39 Nev. 14; 151 P. 514; 158 P. 285.

Where the court had jurisdiction both over the subject-matter and the defendant in a mechanic's lien suit, its failure to enter an order consolidating with the suit a subsequent suit against the same defen-

dant was merely an error in the exercise of jurisdiction. If it was the duty of the court so to consolidate, which could be asserted on appeal only, and not in an independent action. *Daly v. Lahontan Mines Co.*, 39 Nev. 15; 151 P. 514; 158 P. 285.

XIII. MERGER AND BAR OF CAUSES OF ACTION AND DEFENSES

(A) JUDGMENTS OPERATIVE AS BAR

24. Judgment on motion or summary proceeding.

A default judgment entered by the clerk without authority was void, and the court of its own motion could set it aside and should do so, although a motion to set it aside on the ground of excusable neglect had previously been denied, notwithstanding district court rule 36 providing that no motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted upon motion after notice to the adverse parties. *Esden v. May*, 36 Nev. 611; 135 P. 1185.

25. Judgment on discontinuance, dismissal or nonsuit.

An order for the nonsuit and dismissal of an action is not a judgment on the merits, and does not bar subsequent proceedings on the same cause of action. *Clow v. West*, 37 Nev. 267; 142 P. 226.

XIV. CONCLUSIVENESS OF ADJUDICATION

(B) PERSONS CONCLUDED

26. Identity of persons.

A judgment obtained in a federal court is not binding on parties litigant in a state court who were not made parties to the action in such federal court and whose rights were not subordinate to rights of a party or parties therein, and if deemed erroneous may be disregarded. *Gamble v. Silver Peak*, 34 Nev. 352; 126 P. 111.

27. Privity.

Under the rule that judgments are conclusive and binding not only on the parties to the action in which it was rendered, but on persons in privity with them in respect to the subject-matter of the litigation, where after possession of a car had passed from P. to C., and in an action by B. against C. it had been attached and judgment rendered for B., a bill of sale of the car was given by P. to I., the judgment is admissible to show title and right of possession in B. in replevin for the car by I. against B. *Bank of Italy v. Burns*, 39 Nev. 326; 156 P. 932.

The purchaser who acquires property after suit brought in which title to the property is involved is privy to the judgment; but, on the other hand, a purchaser of property before such suit is brought is not privy to the judgment. *Id.*

28. Successive estates or interests.

Where W. assigned an option in his name

to H.; requested S., the owner of the property optioned, to deal with H.; accepted whatever interest he retained as subordinate to H.—a judgment obtained by S. cutting off all rights of H., under such option is binding on W. *Gamble v. Silver Peak*, 34 Nev. 351; 126 P. 111.

Where plaintiff's rights in mining property under contracts were subordinate to those of another, they were cut off by judgments cutting off such persons' rights. *Id.*

29. Persons not parties or privies.

One not a party to a judgment is not bound thereby. *Johnson v. Garner*, 233 F. 759.

(C) MATTERS CONCLUDED

30. Scope and extent of estoppel.

Where plaintiff was a party to a former action, and the matter adjudicated therein was the same as that sought to be presently adjudicated, plaintiff is bound by the judgment in the former action, and cannot seek relief, against the successors to the beneficiaries of the former judgment inconsistent with it. *Bernard v. Metropolis L. Co.*, 40 Nev. 89; 160 P. 811.

31. Matters not in issue.

Where a judgment debtor instituted interpleader proceedings upon being garnished, but the right of a claimant to recover attorney's fees was not made an issue nor decided in such suit, the question is not rendered *res judicata* so as to prevent recovery of such fees in an action by the claimant for the wrongful garnishment of such judgment. *McIntosh v. Knox*, 40 Nev. 403; 165 P. 337.

XVII. FOREIGN JUDGMENTS

32. Judgments of state courts—Want of jurisdiction.

While an action may be maintained in one state on a judgment or decree rendered in another, such judgment must be valid, and it will support no action where rendered against a nonresident, who was not served within the state and did not appear. *Keenan v. Keenan*, 40 Nev. 352; 164 P. 351.

33. Judgments of state courts—Enforcement in other states.

A judgment on substituted service of summons is enforceable only on the property within the state out of which summons is issued. *Id.*

XIX. SUSPENSION, ENFORCEMENT, AND REVIVAL

34. Proceedings to revive judgment.

Despite Rev. Laws, 5843, where a divorce decree provides for installment payments of alimony and for support of child, former wife cannot nearly three years after judgment, and after husband's death, revive cause, and, under guise of making his representatives parties defendant, retry issue of alimony and child support and recover judgment for lump sum instead of monthly

payments, and declare it a prior lien on the husband's estate, a judgment entirely different from original judgment. *Sweeney v. Sweeney*, 42 Nev. 432; 179 P. 638.

XXII. PLEADING AND EVIDENCE OF JUDGMENT AS ESTOPPEL OR DEFENSE

35. Allegations, admissions, and denials.

In an action to restrain the diversion of water, allegations of defendant's affirmative answer setting forth the court, the jurisdiction, the subject-matter, and the scope and effect of a former action, and plaintiff's connection with the subject-matter, the final judgment bearing upon and having to do with that matter, the common and general interest of plaintiff in that subject-matter, and his connection with the force and effect of the former judgment, was sufficient to constitute a proper pleading of former judgment affecting the parties. *Bernard v. Metropolis L. Co.*, 40 Nev. 89; 160 P. 811.

If a judgment of another state, pleaded as *res judicata*, could under a rule of that state be merely one of nonsuit, which it could not be under the laws of this state, such rule must be pleaded and proven. *Danforth v. Danforth*, 40 Nev. 435; 166 P. 927.

36. Issues, proof and variance.

While under Rev. Laws, 5070, the answer pleading as *res judicata* a judgment of a court of another state, denying divorce, as to which no presumption of regularity of proceedings obtains, need not plead the jurisdictional facts, yet, the reply denying the rendering of the judgment, they must be proven, except those admitted by the reply. *Danforth v. Danforth*, 40 Nev. 436; 166 P. 927.

37. Trial and review.

The truth of a sufficiently alleged plea of former judgment affecting the same parties and the same subject-matter as involved in the present case was for the trial court, if the plea was denied. *Bernard v. Metropolis L. Co.*, 40 Nev. 90; 160 P. 811.

See Constitutional Law, 20; Criminal Law, 17; Licenses, 6; Mechanics' Liens, 14.

JUDGMENT AGAINST PARTNERS

See Partnership, 4.

JUDGMENT AS BAR

See Judgment, 30, 37.

JUDGMENT AS "ENTERED"

See Appeal and Error, 86.

JUDGMENT FOR ALIMONY

See Divorce, 21, 25, 26.

JUDGMENT FOR COSTS

See Certiorari, 3.

JUDGMENT FOR SUPPORT OF CHILDREN

See Divorce, 27.

JUDGMENT IN FOREIGN STATE

See Appeal and Error, 113.

JUDGMENT ROLL

See Appeal and Error, 46, 47, 50, 94.

"JUDGMENT ROLL"

See Appeal and Error, 64.

JUDGMENT ROLL AND ASSIGNMENT OF ERRORS

See Appeal and Error, 47.

JUDICIAL INQUIRY

See Habeas Corpus, 13, 15.

JUDICIAL NOTICE

See Evidence, 1, 2.

JUDICIAL NOTICE OF STATUTES

See Criminal Law, 21.

JUDICIAL POWERS

See Constitutional Law, 19.

JUDICIARY

See Constitutional Law, 20.

JURISDICTION

See Allimony, 1; Divorce, 15, 27; Intoxicating Liquors, 6; Mines and Minerals, 24; Prohibition, 7.

JURISDICTION IN DIVORCE ACTIONS

See Divorce, 17.

JURISDICTION OF COURTS

See Mechanics' Liens, 14.

JURISDICTION OF DISTRICT COURT

See Divorce, 4.

JURISDICTION OF DISTRICT COURT UNDER WATER LAW

See Constitutional Law, 26.

JURISDICTION OF JUSTICE OF THE PEACE UNDER PROHIBITION ACT

See Criminal Law, 17.

JURISDICTION OF SUPREME COURT

See Appeal and Error, 32, 33; Criminal Law, 89.

JURISDICTION ON APPEAL

See Justices of the Peace, 11.

JURISDICTION TO AWARD ALIMONY

See Divorce, 25.

JURISDICTION UNDER PROHIBITION ACT

See Constitutional Law, 14.

JUROB

See New Trial, 1.

JURORS

See Grand Jury, 4.

JURY**II. RIGHT TO TRIAL BY JURY.**

1. Civil proceedings other than actions.
2. Waiver of right—In civil cases.

IV. SUMMONING, ATTENDANCE, DISCHARGE, AND COMPENSATION.

3. Jury list.
4. Selection and drawing of regular panel.
5. Excusing and discharging jurors from attendance.

V. COMPETENCY OF JURORS, CHALLENGES AND OBJECTIONS.

6. Business connection or transaction with party or attorney.
7. Bias or prejudice.
8. Formation and expression of opinion as to cause.
9. Challenges for cause—Making and sufficiency.
10. Challenges for cause—Examination of jurors.
11. Formation and expression of opinion as to cause—From rumor and newspaper reports.
12. Challenge to panel or array, and motion to quash venire—Grounds.
13. Challenge to panel or array, and motion to quash venire—Time.
14. Challenge for cause—Trial and determination.

II. RIGHT TO TRIAL BY JURY

1. Civil proceedings other than actions.

In a proceeding to condemn land as a place for the keeping of tailings from an ore mill, defendants contended that tailings already placed on their lands were abandoned by plaintiff and had become their property, and that there was therefore no necessity for condemning the land as a place to store such tailings. Held, that defendants were not entitled to a jury trial on this question of ownership of the tailings, as it was an incident of the determination of the right of condemnation which was a question solely for the court. *Goldfield Con. v. O. S. A. Co.*, 38 Nev. 428; 150 P. 313.

2. Waiver of right—In civil cases.

The trial court did not abuse its discretion in refusing to set aside a waiver of jury trial made in open court, where the application was not made until the trial. *De Remer v. Anderson*, 41 Nev. 288; 169 P. 737.

Where the right to a jury trial is waived by oral consent in open court, entered in the minutes pursuant to Rev. Laws, 5226, setting aside such waiver rests in the trial court's discretion. *Id.*

IV. SUMMONING, ATTENDANCE, DISCHARGE, AND COMPENSATION

3. Jury list.

That the names of the trial jurors were deposited by the commissioners in a jury box which contained names of trial jurors selected for the previous year, which had not been withdrawn therefrom, did not prejudice accused. *State v. Bachman*, 41 Nev. 197; 168 P. 733.

4. Selection and drawing of regular panel.

The drawing of the panel of jurors in the courtroom. Instead of the office of the county clerk, as provided for by Rev. Laws, 4930, was not error; such statute being merely directory. *State v. Sella*, 42 Nev. 467; 168 P. 278; 180 P. 980.

In the absence of bad faith or corruption on the part of the board of county commissioners in selecting jurors for the year, the presence of the district attorney and his offering suggestions as to qualifications would not vitiate the panel. *State v. Bachman*, 41 Nev. 197; 168 P. 733.

5. Excusing and discharging jurors from attendance.

Under Rev. Laws, 4903, providing that the two judges of the district court shall have concurrent and coextensive jurisdiction, one judge of the district court has power to excuse jurors and to issue a second venire to fill out the panel. *State v. Switzer*, 38 Nev. 108; 145 P. 925.

V. COMPETENCY OF JURORS, CHALLENGES AND OBJECTIONS

6. Business connection or transaction with party or attorney.

The relation of landlord and tenant be-

tween a juror and a party authorizes the sustaining of a challenge to a juror under Comp. Laws, 3259, subsec. 3, making it ground for challenge for cause to a juror that he is "united in business" with either party. *Sherman v. Southern Pacific Co.*, 33 Nev. 385; 111 P. 416; 115 P. 909; Ann. Cas. 1914A, 217.

7. Bias or prejudice.

A juror in a trial for murder who, from what he had read and heard, had formed and expressed an opinion going to the merits of the case, and had talked about it with several persons, none of whom had witnessed the homicide, and who on inquiry stated that he had an opinion as to defendant's guilt which would require testimony to remove, but that he would lay such opinion aside and try the case on the evidence, was not incompetent on the ground of actual bias. *State v. Salgado*, 38 Nev. 64; 145 P. 919; 150 P. 764.

A challenge to a juror, who on voir dire testified that he entertained an opinion which he could lay aside without any evidence, and that he could determine the case according to the evidence and the instructions, and that he had not expressed any opinion, but that he had at the present time some belief on the guilt or innocence of the accused, based on what he had heard, was properly denied. *State v. Casey*, 34 Nev. 154; 117 P. 5.

8. Formation and expression of opinion as to cause.

The existence of a mere abstract opinion of a juror, in which no element of malice or unnecessary prejudice enters, does not form a just ground for the rejection of the juror, though he admits that the defense of insanity, owing to its abuse, raises a feeling of hostility to accused, and where the evidence shows that, notwithstanding his feelings against the defense, the juror will be guided by the testimony, uninfluenced by any bias, he is competent. *State v. Casey*, 34 Nev. 155; 117 P. 5.

A challenge to a juror, who on voir dire admitted that he entertained a prejudice against the defense of hereditary insanity and acute alcoholic insanity, and did not believe in their existence, but who stated that if legal insanity was shown by the evidence and the instructions he would give proper credit to the defense, was properly denied. *Id.*

9. Challenges for cause—Making and sufficiency.

Rev. Laws, 7145-7146, allow a challenge for cause on the general ground that a juror is disqualified for want of any qualification prescribed by law, and on the particular ground that he is disqualified from serving in an action on trial. Section 7147 allows a challenge for such a state of mind on the part of the juror as leads to a just inference that he will not act with entire impartiality, designated "actual bias." Section 7150 provides that in a challenge for

actual bias it must be alleged that the juror is biased against the party challenging him, but that no one shall be disqualified by reason of a formed or expressed opinion on the matter in issue, provided that it appears to the court that he can act impartially in the trial. Held, that a challenge "for actual bias," not stating any ground upon which the challenge rested or any reason on which it was made or the party against whom the jury was biased, was in form insufficient. (Norcross, J., dissenting.) *State v. Salgado*, 38 Nev. 64; 145 P. 919; 150 P. 764.

10. Challenges for cause—Examination of jurors.

Court did not err, in a homicide case, in asking jurors on their voir dire whether they had any conscientious scruples against the infliction of the death penalty; there being nothing to indicate that the evidence would not sustain such a verdict. *State v. Milosovich*, 42 Nev. 263; 175 P. 139.

11. Formation and expression of opinion as to cause—From rumor and newspaper reports.

An opinion based merely on rumors and newspaper reports does not disqualify a juror. *Id.*

12. Challenge to panel or array, and motion to quash venire—Grounds.

Under Rev. Laws, 7133, providing that a challenge to the panel can be founded only on a material departure from the forms prescribed by statute in respect to the drawing and return of the jury, or on the intentional omission of the proper officer to summon one or more of the jurors, an objection to the panel, on the ground that the court having summoned a panel of jurors excused a portion of them and issued a second venire is not well taken. *State v. Switzer*, 38 Nev. 108; 145 P. 925.

13. Challenge to panel or array, and motion to quash venire—Time.

Under Rev. Laws, 7134, providing that a challenge to the panel must be taken before a juror is sworn, an objection to the panel, first made after the jury was sworn, on the ground that the court had issued a second venire after excusing a portion of the first venire, came too late. *Id.*

14. Challenge for cause—Trial and determination.

It is not error to fail to appoint triers to determine a challenge for actual bias, where there has been no demand for the appointment of triers. *State v. Casey*, 34 Nev. 155; 117 P. 5.

In determining the condition of a juror's mind as to his qualifications, all of his examination on voir dire should be considered and doubts as to his qualification resolved in favor of accused. *State v. Casey*, 34 Nev. 154; 117 P. 5.

See Criminal Law, 82; Libel and Slander, 12, 13; Master and Servant, 31; Trial, 21.

JURY TRIAL

See Constitutional Law, 47.

JURY VERDICT ADVISORY IN EQUITY CAUSES

See Appeal and Error, 80.

JUSTICES OF THE PEACE

III. CIVIL JURISDICTION AND AUTHORITY.

1. Character of parties.
2. Amount or value in controversy—Determination of amount or value.
3. Jurisdiction to be shown by record.

IV. PROCEDURE IN CIVIL CASES.

4. Process—Service.
5. Process—Defects, objections, and amendment.
6. Appearance and representation by attorney.
7. Pleading—Mode and form.
8. Pleading—Declaration, complaint, or statement of demand.
9. Judgment—By default.

V. REVIEW OF PROCEEDINGS.

(A) Appeal and Error.

10. Nature and form of remedy.
11. Appellate jurisdiction.
12. Requisites and proceedings for transfer of cause—Bonds or other securities.
13. Determination and disposition of cause—Remand and proceedings before justice.

(B) Certiorari.

14. Review.

III. CIVIL JURISDICTION AND AUTHORITY

1. Character of parties.

Under Const. art. 6, secs. 6-8, providing that district courts shall have jurisdiction in all cases where the demand exceeds \$300 and all cases relating to the persons and estates of minors and insane persons, and giving the legislature power to fix the powers of justices of the peace, provided they shall not have jurisdiction conflicting with that of courts of record, and Rev. Laws, 5714, 5726, conferring jurisdiction upon justices' courts in actions on contract for the recovery of money only where the demand is not over \$300, and providing for appearance by general guardian or guardian ad litem of an infant or insane person in justice's court, a justice's court has jurisdiction in actions at law brought by the guardian of a minor where the amount involved does not exceed \$300. *Killgrove v. Morriss*, 39 Nev. 224; 156 P. 686.

2. Amount or value in controversy—Determination of amount or value.

Const. art. 6, sec. 8, enacted while Stats. 1861, c. 15, was in force in the territory, providing for the foreclosing of all liens in one action, requires the legislature to fix the

powers of justices of the peace, and authorizes it to confer jurisdiction upon them, concurrent with the district courts, of actions to enforce mechanics' liens wherein the amount does not exceed \$300. Rev. Laws, 5714, is to the same effect, and section 2224 allows any number of lien claimants to join in the same action and the court to consolidate separate actions; and section 2227 provides that such liens may be enforced by an action in any court of competent jurisdiction, and, as amended by Stats. 1907, c. 90, applied to mechanics' lien proceeding in justice's court where the sum involved does not exceed \$300. Held, that the words "sum involved" mean the sum involved in the several liens embraced in a suit, and that a justice's court had no jurisdiction of an action to foreclose mechanics' liens, where the total amount of the liens exceeds \$300 notwithstanding each of the liens is for a less amount. *Phillips v. Snowden Placer Co.*, 40 Nev. 66; 160 P. 786.

3. Jurisdiction to be shown by record.

Justice courts being of special, limited, and inferior jurisdiction, proceedings therein must show such facts as constitute a case within the jurisdiction, and otherwise the law regards the whole proceeding as *coram non iudice* and void. *State v. Breen*, 41 Nev. 516; 173 P. 555.

IV. PROCEDURE IN CIVIL CASES

4. Process—Service.

Under Rev. Laws, 5732, providing that summons may be served by a sheriff or constable of the state or by any other person of the age of 21 years or over, not a party to the action, personal service upon a nonresident defendant made by a nonresident whose affidavit recited that he was over the age of 18 years was ineffectual, and could not give the justice court jurisdiction to render judgment. *Lawson v. Dunseath*, 41 Nev. 321; 170 P. 19.

5. Process—Defects, objections, and amendment.

Where the summons issued out of justice court and served upon defendant was not signed by the justice, it is voidable, and may be set aside upon appropriate motion. *Wong Kee v. Lillis*, 37 Nev. 5; 138 P. 900.

6. Appearance and representation by attorney.

The answer of a defendant in an action before a justice's court stated that defendant objected that no copy of the complaint was served upon him, and prayed that service of summons be set aside as void, and further stated that defendant, without waiving his objection to want of service of a copy of the complaint, for answer thereto denied each allegation thereof. Held, that the justice's court acquired jurisdiction of defendant's person. *Bancroft v. Pike*, 33 Nev. 53; 110 P. 1.

7. Pleading—Mode and form.

The same technical pleadings are not

required in a civil action in the justice's court as is required in a criminal complaint, or in pleadings in the district court. *State v. Langan*, 36 Nev. 577; 137 P. 517.

8. Pleading—Declaration, complaint, or statement of demand.

A complaint in a justice's court alleging, in effect, that defendant undertook the collection of a lien on certain mining property for one S. and thereafter recovered the full amount of the lien claim; that after suit was instituted, but prior to judgment S. assigned to plaintiff all interest in said lien claim subject to the payment of costs and expenses of collection; that, after paying such costs and expenses, defendant had remaining in his possession \$154.55; that plaintiff was the owner of said lien and entitled to an accounting from defendant of the amount realized; that defendant owes plaintiff \$154.55 and demands judgment therefor, states a cause of action sufficiently to invest the justice's court with jurisdiction to try the action originally and the district court to try the same *de novo* on appeal. *Id.*

9. Judgment—By default.

Since the civil practice act, section 294 (Rev. Laws, 5236), providing for entry of judgment for the plaintiff where defendant fails to answer, and that an answer shall include any pleading that raises an issue of law or fact, whether by general or special appearance, is not made applicable to justices' courts by reason of civil practice act, sec. 873 (Rev. Laws, 5815), providing that only the provisions of the act which are in their nature, or which have been made, applicable, are applicable to justices' courts and the proceedings therein, because civil practice act, sec. 812 (Rev. Laws, 5754), sets forth a separate and complete system governing trials and judgments in the justice court, similar to the system prescribed by section 294; and when a separate and independent section is found in the practice act covering the matter of pleading in the justice court, it must be construed that the legislative intent was to limit the provisions of section 294 to the district court; the relator's special appearance challenging the jurisdiction of the justice court was not affected by the provisions of section 294 and was not an answer. *Regan v. King*, 39 Nev. 216; 156 P. 688.

Under civil practice act, section 812, governing trials and judgments in the justice court, and providing that where the defendant fails to answer within the time specified in the summons, the court may render judgment in favor of the plaintiff, where the plaintiff appeared specially and filed a motion to dismiss the complaint, but did not answer, the justice did not exceed his jurisdiction in entering a default against a defendant and denying him time to answer after the time prescribed by law had expired. *Id.*

V. REVIEW OF PROCEEDINGS**(A) APPEAL AND ERROR****10. Nature and form of remedy.**

In the absence of a statute, a justice of the peace cannot certify a case to another court. *State v. Breen*, 41 Nev. 516; 173 P. 555.

11. Appellate jurisdiction.

If a justice's court did not acquire jurisdiction of defendant's person, the district court would not have jurisdiction of an appeal from its judgment, and should dismiss the appeal. *Bancroft v. Pike*, 33 Nev. 53; 110 P. 1.

The district court has final appellate jurisdiction over justice's court, so that where defendant, having suffered adverse judgment in justice's court, brought certiorari to the district court, which dismissed the writ, the supreme court had no jurisdiction over an appeal under the title of the cause followed in the justice's court; a different title having been used in the district court. *Mazade v. Justice Court*, 41 Nev. 481; 172 P. 378.

The jurisdiction of an appellate court on appeal from a justice's court is entirely derivative, and such court acquires no jurisdiction to try a case on appeal from a justice's court where the latter is without jurisdiction to entertain the case and render judgment therein. *State v. Breen*, 41 Nev. 516; 173 P. 555.

The general rule is that the district court acquires no jurisdiction to try a cause on appeal from a justice's court, where the justice's court was without jurisdiction to entertain the case and render judgment therein. *Phillips v. Snowden Placer Co.*, 40 Nev. 66; 160 P. 786.

Where the justice's court had no jurisdiction of a suit to enforce mechanics' liens wherein the aggregate amount involved exceeded \$300, but where the district court had original concurrent jurisdiction of the subject-matter, without such limitation as to amount, and where the defendant therein, after judgment for the plaintiff and the intervening claimants, appealed to the district court, where trial was had without any question being raised as to its jurisdiction, he was estopped to thereafter question the district court's jurisdiction on the ground that it had no greater jurisdiction on appeal than the justice's court. *Id.*

12. Requisites and proceedings for transfer of cause—Bonds or other securities.

The Nevada statute (Comp. Laws, 3679), provides that an appeal from a justice's court shall not be effectual unless an undertaking be filed in the sum of \$100 in gold coin, for the payment of the costs on appeal, and further provides that a deposit of the amount of the judgment appealed from, including all costs, "shall

be equivalent to the filing of the undertaking in this section mentioned." Held, that a deposit with a justice of a sum equal to the amount of the judgment appealed from, including costs, is equivalent to the filing of an undertaking for the payment of the costs on appeal. Whether such deposit is sufficient to also stay execution, not determined. *Floyd v. District Court*, 36 Nev. 349; 135 P. 922.

Where the sureties' sufficiency is not excepted to within five days, as required by Rev. Laws, 5792, the district court acquires jurisdiction, notwithstanding that two days later appellant admits due service of such exceptions before the justice has certified the case. *Yowell v. District Court*, 39 Nev. 423; 159 P. 632.

Under Rev. Laws, 5792, providing that an appeal from a justice to a district court will be regarded as if no undertaking was given, unless the sureties, when challenged, justify after notice, etc., held that their justification in the prescribed manner is essential to the district court's jurisdiction, where their sufficiency was properly challenged. *Id.*

13. Determination and disposition of cause—Remand and proceedings before justice.

The district court may either dismiss an appeal from a justice's court, or may try the case *de novo*, but cannot refuse to do either, so that if the justice's court had jurisdiction to enter its judgment, the district court could not on appeal to it remand the case and compel the justice's court to again assume jurisdiction. *Bancroft v. Pike*, 33 Nev. 53; 110 P. 1.

(B) CERTIORARI**14. Review.**

On certiorari to review a judgment of the justice court because of a defect in the summons, the judgment should be vacated where the docket of the justice did not affirmatively show a sufficient service of summons. *Wong Kee v. Lillis*, 37 Nev. 5; 138 P. 900.

Facts essential to establish the jurisdiction of a justice of the peace must affirmatively appear. A recital in a justice's docket that summons was "duly served" or that the attorney "came into court and made return on summons as by law provided," is insufficient. *Id.*

See Certiorari, 3; Habeas Corpus, 4.

JUSTIFIABLE HOMICIDE

See Criminal Law, 61.

KILLING

See Rewards, 2.

LABOR LIENS

See Mechanics' Liens, 9.

LACHES

See Appeal and Error, 16, 28; Dismissal and Nonsuit, 1, 2; Equity, 3, 4, 5; Joint Ventures, 3; Mines and Minerals, 21; Pleading, 15.

LAND

See Gifts, 1.

LAND CONVEYED

See Boundaries, 1.

LANDLORD AND TENANT**III. LANDLORD'S TITLE AND REVERSION.****(A) Rights and Powers of Landlord.**

1. Assignment of rent.

(B) Estoppel of Tenant.

2. Leases and agreements as ground of estoppel.

IV. TERMS FOR YEARS.**(C) Extensions, Renewals, and Options to Purchase or Sell.**

3. Renewal leases.

V. TENANCIES FROM YEAR TO YEAR AND MONTH TO MONTH.

4. Creation of tenancy from month to month.

VIII. RENT AND ADVANCES.**(A) Rights and Liabilities.**

5. Surrender.

6. Payment.

(B) Actions.

7. Evidence.

IX. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD.

8. Actions for unlawful detainer — Nature and form.

9. Actions for unlawful detainer — Right of action and defense.

10. Actions for unlawful detainer — Jurisdiction and proceedings.

III. LANDLORD'S TITLE AND REVERSION**(A) RIGHTS AND POWERS OF LANDLORD****1. Assignment of rent.**

The lessor's assignment of "all rents due and to become due under" a certain lease was not an assignment in itself of the lease, and did not create an estate or interest in the lands within Rev. Laws, 1038, 1039, 1069, stating the requisites of an instrument affecting the estates or interests in lands and of recordation in order to constitute notice. *Washoe Co. Bank v. Campbell*, 41 Nev. 153; 167 P. 643.

Such an assignment does not, when recorded, constitute notice to the lessees of the assignment. *Id.*

In the absence of actual or constructive notice to the lessees of an assignment of the rent due or to become due, they could interpose against the assignee any defenses maintainable against the lessor. *Id.*

(B) ESTOPPEL OF TENANT**2. Leases and agreements as ground of estoppel.**

The rule that a tenant cannot dispute his landlord's title does not apply to a defendant in unlawful detainer, seeking to show the nonexistence of the relation of landlord and tenant. *Yori v. Phenix*, 38 Nev. 277; 149 P. 180.

IV. TERMS FOR YEARS**(C) EXTENSIONS, RENEWALS, AND OPTIONS TO PURCHASE OR SELL****3. Renewal leases.**

Evidence that lessee worked the demised premises from the date of the lease, although the landlord's horses were pastured on it for several weeks from such date, held not to establish a consideration for an agreement extending the lease two weeks. *De Remer v. Anderson*, 41 Nev. 287; 169 P. 737.

A rental receipt for a period longer than that named in the lease is only evidence of money paid, and does not establish a new consideration necessary to a modification of the lease. *Id.*

V. TENANCIES FROM YEAR TO YEAR AND MONTH TO MONTH**4. Creation of tenancy from month to month.**

A lease for an indefinite term, with monthly rental reserved, creates a tenancy from month to month, unless certain special circumstances alter the rule. *Proskey v. Colonial Hotel Co.*, 36 Nev. 76; 133 P. 390.

VIII. RENT AND ADVANCES**(A) RIGHTS AND LIABILITIES****5. Surrender.**

Where a landlord grants a new lease to a stranger with the assent of the tenant during the existence of an outstanding lease, and the tenant gives up his own possession to the stranger, who thereafter pays rent, or where in any other way a new tenant is by agreement of the tenant and the landlord substituted and accepted in place of the old, there is a surrender by operation of law. *Washoe Co. Bank v. Campbell*, 41 Nev. 153; 167 P. 643.

Where the landlord and his assignee of rents after lessees failed to pay the rents negotiated with other parties who subsequently went on the premises and paid the rent after the assignee was told by the lessees that a third person would assume the lease and made no objection, the landlord and the assignee were estopped to sue the lessees for the rent. *Id.*

6. Payment.

A complaint alleging that respondent had entered into a contract with appellant to lease him a certain apartment in respondent's hotel, appellant to have the sole and exclusive control, use and occupancy of said apartment for the safe keeping of his personal effects and papers, during a contemplated absence of several months, at an

agreed rental per month until his return, which rental was paid as agreed; that the sole inducement and consideration for making such contract was the safe keeping and security of appellant's personal effects and papers; that during the absence of appellant and without his knowledge or consent, respondent rented said apartment to divers and sundry persons, thus permitting them to have access to appellant's said papers and effects, if such persons so desired—fails to state a cause of action for total failure of consideration, it not appearing from the complaint that the personal effects of appellant were not safely kept, or that any person did view, observe, or in any way molest his effects or papers or gained any knowledge therefrom, and that part of the amount sued for was for time when appellant was in actual personal occupancy of the leased apartment. *Proskey v. Colonial Hotel Co.*, 36 Nev. 76; 133 P. 390.

(B) ACTIONS

7. Evidence.

In action of the landlord's assignee for rent, it is proper for the trial court to consider the occupancy of the premises and payment of the rentals by other parties than the original lessee when such facts were known and acknowledged by the lessor. *Washoe Co. Bank v. Campbell*, 41 Nev. 153; 167 P. 643.

Where the lessees in an action by the landlord's assignee for rent claimed a release by operation of law, it was proper for the trial court to consider occupation of premises and payment of rentals by third persons with the knowledge of the landlord. *Washoe Co. Bank v. Campbell*, 41 Nev. 154; 167 P. 643.

Evidence held to sustain finding that the lessees delivered up possession of the premises to a third person, notifying the person to whom they had been accustomed to pay rentals, and that the third person continued in possession and made at least one rent payment to such agent. *Id.*

IX. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD

8. Actions for unlawful detainer—Nature and form.

The purpose of the unlawful detainer statutes is to afford a summary remedy to landlords where the relationship of landlord and tenant exists, and a mere prima facie showing of the existence of the relation does not preclude defendant from showing facts establishing the nonexistence of the relation. *Yori v. Phenix*, 38 Nev. 277; 149 P. 180.

9. Actions for unlawful detainer—Right of action and defenses.

Under Const. art. 6, sec. 14, declaring that there shall be but one form of civil action, in which law and equity may be administered, and civil practice act, sec. 1 (Rev. Laws, 4943), providing that there shall be but one form of civil action for the enforcement or protection of private rights,

and section 559 (section 5501), providing that there shall be but one action for the recovery of any debt or the enforcement of any right secured by a mortgage or lien, and section 576 (section 5518), declaring that a mortgage shall not be deemed a conveyance, and section 661 (section 5603), declaring that the provisions of this act relative to civil actions, appeals, and new trials shall apply to proceedings in forcible entry and detainer, a defendant in an action under section 646 (section 5588), for unlawful detainer may show the nonexistence of the relation of landlord and tenant essential to the maintenance of the action, and may show that an instrument in form a lease was a part of another instrument, and that the two constituted a mortgage, and thereby defeat the action. *Id.*

10. Actions for unlawful detainer—Jurisdiction and proceedings.

Rev. Laws, 5599, concerning unlawful detainer and providing that "judgment shall be rendered against the defendant * * * for the rent and for three times the amount of damages assessed," does not clearly authorize the trebling of the amount of rent found due, as the statute mentions other elements of damage, such as waste, and while the legislature has used language to indicate that in some way treble damages are to be recovered from tenants holding over, the statute having failed to show what damages should be trebled, as penalties and forfeitures will not be extended by implication and doubtful construction, no such judgment can be rendered against a tenant holding over. *Regan v. King*, 39 Nev. 216; 156 P. 688.

See Mortgages, 5.

LAND OFFICE

See Mines and Minerals, 5, 14, 15.

LAPSE OF TIME

See Equity, 3.

LARCENY

I. OFFENSES AND RESPONSIBILITY THEREFOR.

1. Property subject of larceny—Nature.
2. Taking—Consent of owner.
3. Grand or petit larceny and degrees.

II. PROSECUTION AND PUNISHMENT.

(A) Indictment and Information.

4. Description of property.

I. OFFENSES AND RESPONSIBILITY THEREFOR

1. Property subject of larceny—Nature.

Rev. Laws, 6640 (Crimes and Punishment Act, sec. 375), which defines the stealing of "cattle" as grand larceny, embraces cows, bulls, and steers of the domesticated bovine genus. *State v. District Court*, 42 Nev. 218; 174 P. 1023.

2. Taking—Consent of owner.

The watchman of an ore-milling company was directed by a deputy sheriff, who was

in the employ of the company, to apparently agree to permit accused to extract and conceal ore, inducing accused to believe that he would act as an accomplice, but not to actually assist him in taking the ore; and the watchman made an arrangement with accused by which he was to give a signal when accused could safely take the ore, but refused to actually assist in taking and disposing of it. Held, that there was no consent by the company's agents to the taking of the ore, so as to prevent its taking from being larceny. *State v. Smith*, 33 Nev. 438; 117 P. 19.

3. Grand or petit larceny and degrees.

Petit larceny as defined by statute is a generic offense and is not an offense included within the crime of grand larceny. *Ex Parte Dickson*, 36 Nev. 94; 133 P. 393.

II. PROSECUTION AND PUNISHMENT

(A) INDICTMENT AND INFORMATION

4. Description of property.

Under Stats. 1913, c. 209, sec. 4, requiring charge to be clearly set forth, etc., an information, charging theft of "cattle," is not bad, the word "cattle," as used in Rev. Laws, 6440 (Crimes and Punishments Act, sec. 375), embracing cows, bulls, and steers of domesticated bovine genus. *State v. District Court*, 42 Nev. 218; 174 P. 1023.

LAST CLEAR CHANCE

See Street Railroads, 3.

LATE FILING

See Appeal and Error, 2, 17, 18.

LAW OF THE ROAD

See Highways, 1.

LEASE

See Evidence, 17; Landlord and Tenant, 4; Mines and Minerals, 19, 23.

LEASEHOLD INTEREST

See Eminent Domain, 6.

"LEGACY"

See Wills, 9.

LEGAL CONCLUSIONS

See Pleading, 2.

LEGAL EXCEPTIONS

See Depositions, 3, 4.

LEGAL RESIDENCE

See Divorce, 5; Domicile, 1.

LEGAL TITLE

See Mortgages, 4.

LEGATEES

See Charities, 3.

LEGISLATION

See Statutes, 9.

LEGISLATIVE INTENT

See Divorce, 4; Justices of the Peace, 9; Statutes, 27, 28, 33, 37.

LEGISLATIVE QUESTIONS

See Constitutional Law, 24.

LEGISLATURE

See Constitutional Law, 20, 25; Divorce, 4; Municipal Corporations, 1, 2; Statutes, 43.

LESSEE

See Landlord and Tenant, 1.

LESSOR AND LESSEE

See Mines and Minerals, 26, 29.

LETTER OF ACCEPTANCE

See Contracts, 1.

LEWDNESS

1. Nature and elements of offenses.

1. Nature and elements of offenses.

An indictment alleging that accused wilfully, unlawfully, and feloniously lived with a female named, the female being a common prostitute, charges the offenses denounced by Rev. Laws, 6445, punishing every person who shall live with a common prostitute. *State v. King*, 35 Nev. 153; 126 P. 880.

LIABILITIES

See Executors and Administrators, 12; Forcible Entry and Detainer, 1; Mechanics' Liens, 4; Mines and Minerals, 27.

LIABILITY FOR EJECTION FROM DRAWING-ROOM

See Carriers, 20.

LIABILITY FOR INDEPENDENT ACTS

See Waters and Watercourses, 17.

LIABILITY FOR INJURY

See Railroads, 5.

LIABILITY FOR RENT

See Landlord and Tenant, 5.

LIABILITY FOR REFUSAL TO TRANSFER STOCK

See Trover and Conversion, 2.

LIABILITY OF AGENT

See Principal and Agent, 4.

LIABILITY OF CARRIERS

See Carriers, 5.

LIABILITY OF THIRD PARTIES

See Waters and Watercourses, 24.

LIBEL AND SLANDER**I. WORDS AND ACTS ACTIONABLE AND LIABILITY THEREFOR.**

1. Actionable words.
2. Words tending to injure in profession or business.
3. Words actionable as causing special damage—Nature and meaning.
4. Construction of language used.
5. Certainty—Person defamed.
6. Declaration, complaint or petition—Innuendoes.
7. Declaration, complaint or petition—Special damages.

V. SLANDER OF PROPERTY OR TITLE.

8. Nature and elements.
9. Injury from slander.
10. Actions.

VI. CRIMINAL RESPONSIBILITY.

- (A) *Offenses.*
 11. Nature and elements.
- (B) *Prosecution and Punishment.*
 12. Questions for jury.
 13. Verdict.

I. WORDS AND ACTS ACTIONABLE AND LIABILITY THEREFOR**1. Actionable words.**

Any false and malicious writing published of another is "libelous per se" when its tendency is to render the party contemptible or ridiculous in public estimation or expose him to public hatred or contempt. *Talbot v. Mack*, 41 Nev. 245; 169 P. 25.

Words or expressions are "actionable per se" when their injurious character is a fact of common notoriety and generally so understood where the utterance is published, and words or expressions "libelous per quod" are such as require that their injurious character or effect be established by allegation and proof. *Talbot v. Mack*, 41 Nev. 246; 169 P. 25.

2. Words tending to injure in profession or business.

While words which directly tend to the prejudice of any one in his office, profession, trade, or business are actionable per se, all words disparaging persons in such matters are not, without proof of damage, actionable in themselves. *Id.*

Statement in a letter to stockholders in an insurance company, that the company is overloaded with salaries and traveling expenses, without making reference to the plaintiff, is not libelous per se. *Talbot v. Mack*, 41 Nev. 245; 169 P. 25.

The term "overload," used in a letter stating that an insurance business was overloaded, means bearing too heavy a burden or too heavily loaded, but implies nothing defamatory on its face in the sense of imputing dishonesty, lack of fair dealing, want of fidelity, integrity, or business ability. *Id.*

3. Words actionable as causing special damage—Nature and meaning.

In action for libel by words not actionable per se, special damages must be alleged and proved. *Talbot v. Mack*, 41 Nev. 246; 169 P. 25.

4. Construction of language used.

In determining whether words charged are libelous per se, they are to be taken in their plain and natural import according to the ideas they convey to those to whom they are addressed, reference being had not only to the words themselves but also to the circumstances under which they were used. *Talbot v. Mack*, 41 Nev. 245; 169 P. 25.

5. Certainty—Person defamed.

In action for libel there can be no recovery unless the actionable words or assertions referred to the plaintiff at least with reasonable certainty. *Talbot v. Mack*, 41 Nev. 246; 169 P. 25.

6. Declaration, complaint or petition—Innuendoes.

Language or terms, which are not libelous per se, when viewed in the light of their general acceptance and understanding in the community or vicinity in which they are used cannot be made so through the function or force of an innuendo. *Talbot v. Mack*, 41 Nev. 245; 169 P. 25.

The innuendo will not introduce new matter, nor will it be permitted to aid to the extent of enlarging the meaning of the words or expressions used. *Id.*

In an action for libel, if the words or expressions complained of are ambiguous or equivocal, the innuendo may assign the true meaning the plaintiff believes them to bear; but if the words alone, or the words limited by circumstances duly pleaded, are not defamatory, the innuendo cannot make them so. *Talbot v. Mack*, 41 Nev. 246; 169 P. 25.

7. Declaration, complaint or petition—Special damages.

In action for damages by words not actionable per se, the allegation that "by means of said false, libelous and defamatory publication or publications the plaintiff herein was injured in his reputation and good name and standing to his damage in the sum of \$50,000," is insufficient as an allegation of special damages. *Id.*

V. SLANDER OF PROPERTY OR TITLE**8. Nature and elements.**

While the original term "slander" was applied more to words or utterances, the nature of which were defamatory of individuals, the term is applicable to utterances with reference to property, whether

real or personal; but, in order to maintain an action for slander of title to property, it is necessary to show that the words spoken were false, that they were maliciously spoken, and that plaintiff suffered a pecuniary injury. *Potosi Zinc Co. v. Mahoney*, 36 Nev. 390; 135 P. 1078.

In slander of title it must appear that the defamation complained of was published, and the rule existing in libel cases that they are not deemed to be published where the manuscript comes directly and unread into the possession and control of the plaintiff is applicable; the defendant not being liable where plaintiff, having received it, displays it to third persons. *Id.*

9. Injury from slander.

In general, in actions for slander of title to property, there can be no recovery except for damages, and a party is hardly entitled to the extension of an option because of the grantor's slander of the option. *Id.*

10. Actions.

In an action by the grantees of an option, where they sought an extension of the same because of the grantor's slander of the option, evidence held insufficient to establish such slander. *Id.*

VI. CRIMINAL RESPONSIBILITY

(A) OFFENSES

11. Nature and elements.

Rev. Laws, 6428, declaring that every person convicted of libel shall be fined in a sum not exceeding \$5,000 or imprisoned in the county jail not exceeding one year, or in the state prison not exceeding five years, divides the crime of libel into two offenses, one a felony, and the other a misdemeanor. *Ex Parte Booth*, 39 Nev. 183; 154 P. 933; *L. R. A. 1916F*, 960.

(B) PROSECUTION AND PUNISHMENT

12. Questions for jury.

Under Rev. Laws, 6428, declaring that every person convicted of libel shall be fined in a sum not exceeding \$5,000, or imprisoned in the county jail not exceeding one year, or in the state prison not exceeding five years, and that the jury shall have the right to determine the law and the fact, together with section 7196, also declaring that the jury shall have the right to determine the law and the fact, the determination whether a libel is a felony or a misdemeanor is for the jury. *Id.*

13. Verdict.

Rev. Laws, 6428, declares that the punishment for libel shall be fine and imprisonment in the county jail, or imprisonment in the penitentiary, and that the jury shall be the judge of the law and the fact. Section 7196 makes similar provision. Sections 7216 and 7218 declare that a verdict on a plea of not guilty shall be either guilty or not guilty, and that, if a crime is distinguished into degrees, the jury must find the degree, while sections 7221 and 7222 provide for the reconsideration of an informal ver-

dict, and that no judgment of conviction shall be given unless the jury find expressly against the defendant. In a prosecution for libel the verdict was: "We, the jury * * * find the defendant * * * guilty of a gross misdemeanor." Held that, as the jury were entitled to find the grade of the offense, and as the whole record might be looked to, the verdict was not so indefinite that a judgment entered thereon was void; such verdict indicating the degree of the offense of which accused was convicted. *Id.*

"LIBELOUS PER QUOD"

See Libel and Slander, 1.

"LIBELOUS PER SE"

See Libel and Slander, 1, 2.

LICENSE

See Waters and Watercourses, 22.

LICENSES

I. FOR OCCUPATIONS AND PRIVILEGES.

1. Power to license or tax.
2. Power to license or tax—Delegation of power.
3. Constitutionality and validity of acts and ordinances.
4. Subjects of license or tax—Mercantile business.
5. Proceedings to secure license or certificate.

II. IN RESPECT OF REAL PROPERTY.

6. Revocation—Licenses revocable.

I. FOR OCCUPATIONS AND PRIVILEGES

1. Power to license or tax.

The proviso to Stats. 1881, c. 48, added by Stats. 1889, c. 43, reading that in all unincorporated cities and towns the board of county commissioners shall have power to fix and collect a tax upon certain businesses and amusements, and none other, does not apply to towns which established their form of government after the unincorporated town act (Stats. 1879, c. 98) had been repealed by Stats. 1887, c. 43, or to towns which, by reason of their having a voting population of 600 or more, ipso facto come under the general town government act. The term "unincorporated towns" not referring to all towns within the state not incorporated; as to give it such interpretation would nullify the grant by the legislature in the body of the act of power to boards of county commissioners to levy and collect a license tax upon numerous specific businesses, but referring specifically to towns which have assumed a form of town government under the act of 1879 entitled "An act to provide for the government of unincorporated towns in this state." *Nye County v. Schmidt*, 39 Nev. 456; 157 P. 1073.

2. Power to license or tax—Delegation of power.

Under Reno City Charter, art. 12, sec. 10,

subd. 12, as amended by Stats. 1915, c. 184, giving the city council power to impose a license tax on and regulate hacks, hackney coaches, and "all other vehicles used for hire," the city council had authority to pass an ordinance licensing and regulating the operation of jitney busses. *Ex Parte Counts*, 39 Nev. 61; 153 P. 93.

3. Constitutionality and validity of acts and ordinances.

A city ordinance, licensing jitney busses and regulating the tax according to the seating capacity, was not invalid as failing to comply with the charter provision that all licenses should be graduated according to the amount of business done. *Id.*

4. Subjects of license or tax — Mercantile business.

Drummers and traveling salesmen representing mercantile houses in other states are exempt from license within this state under the provisions of the federal constitution relative to interstate commerce, and the purpose of Rev. Laws, 3879, was to place drummers and salesmen representing mercantile houses within the state upon the same equality. *Byran v. City of Sparks*, 36 Nev. 573; 137 P. 522.

Under a city ordinance providing that "Every person engaged in the business of selling at retail, or any manner other than at a fixed place of business within the city, any goods, wares, or merchandise shall obtain a quarterly license and shall pay therefor \$15 per quarter," a person owning a place of business outside the city limits where he manufactured and compounded certain articles used in the grocery trade, and, acting as his own salesman, solicited orders in the city and sold to restaurants, hotels, bakeries, and confectioners other kinds of groceries than manufactured and compounded by him, in both small and large quantities and in broken and unbroken packages, and filled orders given to him by such customers, is a retailer and liable for the license mentioned in the ordinance and is not exempt therefrom under the provisions of Rev. Laws, 3879, exempting drummers and traveling salesmen representing a factory or store located in this state. *Id.*

A person who, in addition to other lines of business, purchases and sells groceries in small quantities and broken packages, differently from wholesalers, is a retailer, and is required to pay a license as such. *Id.*

5. Proceedings to secure license or certificate.

As used in act approved February 20, 1909 (Rev. Laws, 4453), section 9, providing that the state board of embalmers shall recognize licenses issued in another state, and on presentation thereof shall issue the regular license to the holders, the word "shall" is not equivalent to "may," but is mandatory. *Eddy v. Board of Embalmers*, 40 Nev. 329; 163 P. 245.

II. IN RESPECT OF REAL PROPERTY

6. Revocation—Licenses revocable.

An executed parol license, though without consideration, is irrevocable. *Sheehan v. Kasper*, 41 Nev. 28; 165 P. 632.

See Constitutional Law, 38; Intoxicating Liquors, 2.

LIEN

See Continuance, 1; Judgment, 23.

LIEN CLAIMANTS

See Mechanics' Liens, 10, 11.

LIEN OF ATTACHMENT

See Attachment, 4.

LIENS

III. PROCEEDINGS TO PERFECT.

1. Filing or service of copy of claim.

III. PROCEEDINGS TO PERFECT

1. Filing or service of copy of claim.

The filing with the county recorder of an assignment of a lien is constructive notice to all parties interested in such assignment. *State v. Langan*, 36 Nev. 578; 137 P. 517.

See Attachment, 5; Bankruptcy, 6; Banks and Banking, 11, 12, 14; Justices of the Peace, 2, 11; Mechanics' Liens, 1, 4, 5, 14.

LIMITATION OF ACTIONS

I. STATUTES OF LIMITATION.

(A) *Nature, Validity and Construction.*

1. Construction of limitation laws.

(B) *Limitations Applicable to Particular Actions.*

2. Actions or proceedings not specially provided for.

II. COMPUTATION OF PERIOD OF LIMITATION.

(A) *Accrual of Right of Action or Defense.*

3. Title to or possession of real property.

4. Contracts.

5. Continuing contracts.

(B) *Performance of Condition, Demand or Notice.*

6. Conditions precedent.

(C) *Personal Disabilities and Privileges.*

7. Infancy.

(E) *Absence, Nonresidence, and Concealment of Person or Property.*

8. Nonresidence.

(F) *Ignorance, Mistake, Trust, Fraud, and Concealment of Cause of Action.*

9. Existence of trust.

10. Existence of trust, or violation of trust.

III. ACKNOWLEDGMENT, NEW PROMISE, AND PART PAYMENT.

11. Part payment—Sufficiency.

IV. OPERATION AND EFFECT OF BAR BY LIMITATION.

12. Bar of debt as affecting security.

13. Persons barred.

I. STATUTES OF LIMITATION**(A) NATURE, VALIDITY AND CONSTRUCTION****1. Construction of limitation laws.**

The statute of limitations, like any other statute, is to be construed according to the manifest intention of the legislature, and, in ascertaining such intention, the language used should be construed, if possible, according to the usual meaning of the words used. *Wren v. Dixon*, 40 Nev. 172; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

(B) LIMITATIONS APPLICABLE TO PARTICULAR ACTIONS**2. Actions or proceedings not specially provided for.**

Action, by one claiming to be member of joint adventure, to establish his interest in the property acquired by the adventure and for an accounting, was founded upon the agreement creating the trust relation between the parties, and therefore governed by the four-year statute of limitation (Rev. Laws, 4970), and not by the three-year statute applicable to actions based on fraud; an allegation in the complaint, that plaintiff was prevented from complying with his agreement to contribute to the adventure by the concealment by defendants of information, not changing the character of the action to one of fraud, but being a mere excuse for nonperformance by plaintiff. *Miller v. Walser*, 42 Nev. 498; 181 P. 437.

II. COMPUTATION OF PERIOD OF LIMITATION**(A) ACCRUAL OF RIGHT OF ACTION OR DEFENSE****3. Title to or possession of real property.**

Where plaintiff to whom deceased had agreed to leave specified real property in consideration of her remaining with and caring for him during his declining years, was in possession, claiming to own the property, limitations did not run against her right of action against the administrator of the deceased to compel specific performance of the contract, notwithstanding his denials of her ownership, for plaintiff had an equitable title. *Clow v. West*, 37 Nev. 267; 142 P. 226.

4. Contracts.

An action by a party to a contract of joint adventure for a division of property and an accounting of profits accrued upon breach of the contract by the other members. *Miller v. Walser*, 42 Nev. 499; 181 P. 437.

5. Continuing contracts.

Where, by an attorney's contract, he was entitled to \$100 per year for general legal services, he had a cause of action for each year's services so rendered, and recovery by him for more than four years prior to action was barred. *Warren v. Glasgow Exploration Co.*, 40 Nev. 103; 160 P. 793.

(B) PERFORMANCE OF CONDITION, DEMAND OR NOTICE**6. Conditions precedent.**

Where a corporation promised to pay for extra nonofficial services rendered by an officer as soon as it should be out of debt, limitation did not begin to run against an action to recover for such services until the happening of that event. *Montana-Tonopah M. Co., v. Dunlap*, 196 F. 612; 116 C. C. A. 286.

(C) PERSONAL DISABILITIES AND PRIVILEGES**7. Infancy.**

Minor heirs of one who had duly patented mining claim were entitled to notice of the hostile character of defendant's possession, which notice could not be given them until they were capable in law of receiving it; so that, under the statute (Rev. Laws, 4951, et seq.) they might commence an action to recover it within two years after majority, when they were chargeable with notice. *Wren v. Dixon*, 40 Nev. 173; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

Rev. Laws, 4946, provides that civil actions can only be commenced within the periods prescribed in the act, after the cause of action has accrued, except where different limitation is prescribed by statute. Section 4951 provides that no action to recover a mining claim shall be maintained unless plaintiff was seized or possessed thereof within two years before the commencement of such action, defining occupation and adverse possession, and extending the provisions of the act applicable to other real estate to mining claims, provided that in such application "two years" shall be intended when "five years" is used, and section 4952 provides that no cause of action to recover real property shall be effectual, unless the person prosecuting the action was seized or possessed of the premises within "five years" before action was commenced, and section 4966 provides that, if one entitled to commence an action to recover real property shall be a minor, the time of disability is no part of the time limited for the commencement of such actions, which may be commenced within two years after the removal of disability. Held, that by interpolation, section 4951 was to be read as if providing that, if a person to whom an action to recover a mining claim accrues is a minor, the period of disability shall not be part of the time limited for the commencement of such action, which may be commenced within two years after the disability ceases. *Wren v. Dixon*, 40 Nev. 171; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

(E) ABSENCE, NONRESIDENCE, AND CONCEALMENT OF PERSON OR PROPERTY**8. Nonresidence.**

In action to recover personal property, where defendant was a nonresident and

rarely visited the state, the plea of the statute of limitations was not available, though property was situated in state. *McCone v. Eccles*, 42 Nev. 451; 181 P. 134.

(F) **IGNORANCE, MISTAKE, TRUST, FRAUD, AND CONCEALMENT OF CAUSE OF ACTION**

9. Existence of trust.

While it is not competent for a trustee to assert a legal title by adverse possession or to plead limitations against a cestui que trust, when the trusteeship is terminated, or when the trustee denies the trust and asserts ownership of the trust property in such a manner that the cestui que trust has actual or constructive notice of the repudiation of the trust, the statute attaches and runs from that time. *Boydston v. Jacobs*, 38 Nev. 175; 147 P. 447.

10. Existence of trust, or violation of trust.

Where plaintiff, after accepting a deed from a trustee not including land to which she claimed she was entitled under the terms of the trust, never received or demanded the rents and profits of such real estate, and the trustee collected and retained them without any question as to his right to do so being raised for about nine years, she could not deny that the position taken by the trustee was an assertion of an adverse title to the property. *Id.*

Where an act is done by a trustee which purports to be an execution of a trust, he is thenceforth regarded as standing at arm's length from the cestui que trust, who must assert his claim at the hazard of being barred by limitations. *Id.*

III. ACKNOWLEDGMENT, NEW PROMISE, AND PART PAYMENT

11. Part payment—Sufficiency.

Though the mortgage given by a guardian for herself and on behalf of her minor ward was invalid for the reason that the order of the probate court, directing the execution of the mortgage, was without statutory authority, the proceeds of the mortgage having been applied to the satisfaction of a valid existing mortgage, a payment of interest on the invalid mortgage will be applied on the former mortgage for the purpose of tolling the statute of limitations in favor of the right of the second mortgagee to enforce the prior mortgage by way of subrogation. *Laffranchini v. Clark*, 39 Nev. 48; 153 P. 250.

IV. OPERATION AND EFFECT OF BAR BY LIMITATION

12. Bar of debt as affecting security.

A mortgage being a mere incident to the debt secured, an action to foreclose the mortgage is barred at the expiration of six years from the maturity of the note secured under Comp. Laws, 3718, providing that actions upon contracts and obligations founded upon instruments in writing must be brought within six years. *Id.*

13. Persons barred.

Whenever a right of action in a trustee with the legal title is barred by limitations, the right of the cestui que trust is also barred, but, if the legal title in the cestui que trust, the statute of limitations which might run against the trustee will not constitute a bar against the cestui if he be under disability. *Wren v. Dixon*, 40 Nev. 172; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

Under Rev. Laws, 5011, providing that every person to whom letters testamentary or of administration shall have issued shall execute a bond with a penalty not less than the value of the personal property, including rents and profits, and may be required to give an additional bond whenever the sale of realty is ordered, the relationship of trustee and cestui que trust between the executor or administrators and the heirs is not created in so far as the same might apply to the realty of an estate, so that the rule that a statute of limitations running against a trustee holding the legal title to realty runs also against the cestui does not apply. *Id.*

See Trusts, 4.

LIMITATION OF JURISDICTION

See Process, 4.

LIMIT OF LEGISLATION

See Constitutional Law, 8.

LIQUIDATED DAMAGES

See Damages, 2.

LIQUOR LICENSES

See Prohibition, 5.

LIQUORS

See Intoxicating Liquors, 2, 3, 7.

"LIQUORS"

See Intoxicating Liquors, 6.

LIVE STOCK

See Animals, 2.

LOANS

See Money Lent, 2.

LOCATION OF MINING CLAIMS

See Mines and Minerals, 1, 2, 4, 10, 12.

LOCATION OF PUBLIC LANDS

See Appeal and Error, 122.

LOSS OF EVIDENCE

See Equity, 4.

LOSS OF PROFITS BY BREACH OF CONTRACT

See Damages, 8.

MALICIOUS PROSECUTION

II. WANT OF PROBABLE CAUSE.

1. Concurrence of other elements.

II. WANT OF PROBABLE CAUSE

1. Concurrence of other elements.

In an action for damages for malicious prosecution of attachment, a judgment will not be reversed that is within the issues made by the pleadings and submitted to the court, although the court found as a fact that the attachment was issued without notice and upon probable cause. *Jaksich v. Guisti*, 36 Nev. 104; 134 P. 452.

Malice and want of probable cause are essential facts to be alleged and proved in an action for damages for malicious prosecution. *Id.*

See Attachment, 7, 8.

"MALT LIQUOR"

See Intoxicating Liquors, 4.

MANAGEMENT OF TRAINS

See Railroads, 6.

MANDAMUS

I. NATURE AND GROUNDS.

1. Nature and scope of remedy.
2. Remedy by appeal or writ of error.
3. Discretion as to grant of writ.
4. Nature and existence of rights to be protected or enforced.
5. Abatement of proceedings—Termination or devolution of right or office.

II. SUBJECTS AND PURPOSES OF RELIEF.

(A) *Acts and Proceedings of Courts, Judges, and Judicial Officers.*

6. Exercise of judicial powers and functions.
7. Matters of discretion.
8. Entertaining and proceeding with cause.

(B) *Acts and Proceedings of Public Officers and Boards and Municipalities.*

9. Ministerial acts.
10. Specific acts.
11. Performance of ministerial duties.
12. Proceedings relating to public lands.
13. Issue of warrants or order for payment.
14. Payment of debts and claims.
15. Payment of debts and claims—Judgment.

III. JURISDICTION, PROCEEDINGS, RELIEF.

16. Time to sue, limitations and laches.
17. Parties defendant or respondents.
18. Petition or complaint, or other application.
19. Demurrer to petition or complaint, or to alternative writ.

III. JURISDICTION, PROCEEDINGS, RELIEF—Contd.

20. Scope of inquiry and powers of court.
21. Performance and enforcement of command.

I. NATURE AND GROUNDS

1. Nature and scope of remedy.

Mandamus will not issue when the ordinary legal remedies will give adequate relief. *Mighels v. Eggers*, 36 Nev. 364; 136 P. 104.

Mandamus will not issue to compel the state controller to draw a warrant in favor of an unliquidated demand against the state approved by the board of examiners, as an adequate remedy exists by civil suit under the provisions of sec. 5653 of the Revised Laws. *Abel v. Eggers*, 36 Nev. 373; 136 P. 100.

Mandamus is not the proper remedy to compel the industrial commission to award an injured workman compensation, under Stats. 1913, c. 111, as amended by Stats. 1915, c. 190, since such workman has a speedy and adequate remedy at law in an action at law against the commission. *State v. Nev. Ind. Comm.*, 40 Nev. 220; 161 P. 516.

2. Remedy by appeal or writ of error.

Writ of mandamus will not assume the function of a writ of error, nor will it serve to require an inferior tribunal to act in any particular manner or to enter any particular judgment or order. *State v. District Court*, 40 Nev. 163; 161 P. 510.

Where a petition was presented in the district court for removal of an administrator, setting up his alleged wrongful acts, and, after hearing both petitioner and respondent, decision was rendered dismissing the petition, such action was not reviewable by mandamus, since the court exercised jurisdiction and discretion in hearing and deciding the case and the petitioner had a plain, speedy and adequate remedy at law by appeal from such decision under Rev. Laws, 6112, providing for appeal from decisions in probate matters. *Id.*

3. Discretion as to grant of writ.

If the court has any jurisdiction to refuse the writ of mandate relating to a matter concerning the public interest, where a party is clearly entitled to it, it ought not to exercise that discretion by refusing the writ when such refusal would abrogate the plain language of the statute. *State v. Dickerson*, 33 Nev. 540; 113 P. 105.

4. Nature and existence of rights to be protected or enforced.

Mandamus will not issue to compel a city council to submit to a vote of the electors of such city a proposed ordinance that would be void even if approved by a majority of electors under the initiative and referendum provisions of the city charter. *State v. Reno City Council*, 36 Nev. 334; 136 P. 110; 50 L. R. A. (N.S.) 195.

Mandamus will issue only where the

right to be protected is clear. *Mighels v. Eggers*, 36 Nev. 364; 136 P. 104.

5. Abatement of proceedings—Termination or devolution of right or office.

A proceeding in mandamus against a county officer does not abate upon the expiration of his term of office; but, the duty being a public one, his successor may be substituted. *Stone v. Bell*, 35 Nev. 240; 129 P. 458.

II. SUBJECTS AND PURPOSES OF RELIEF

(A) ACTS AND PROCEEDINGS OF COURTS, JUDGES, AND JUDICIAL OFFICERS

6. Exercise of judicial powers and functions.

A district judge who acts as trustee of a town site, under Rev. St. U. S. 2387 (U. S. Comp. St. 1901, p. 1457), acts by virtue of his office as judge, and he is not an inferior officer to his associate judge of the district, and such associate judge cannot by mandamus compel the judge acting as such trustee to convey a lot to a purchaser offering to pay \$4.50 therefor, while such trustee demands the right under Comp. Laws, 345, to charge the purchaser \$9.50. *Jennett v. Stevens*, 33 Nev. 527; 111 P. 1025.

7. Matters of discretion.

Mandamus will lie to compel a certain prescribed duty to be assumed by a tribunal, board, or officer, but will not operate beyond a point where that tribunal, board, or officer has the right to exercise discretion. *State v. District Court*, 40 Nev. 163; 161 P. 510.

8. Entertaining and proceeding with cause.

Where a district court wrongfully or erroneously divests itself of jurisdiction, or refuses to assume jurisdiction, mandamus is the proper remedy. *State v. Moran*, 37 Nev. 404; 142 P. 534.

While errors committed in the exercise of a judicial discretion cannot be reviewed or corrected by mandamus, if the district court erroneously decides that it has no jurisdiction and refuses to hear an appeal from a justice's court pursuant to the constitution, art. 6, sec. 6, as by dismissing the appeal, mandamus is the proper remedy to compel it to assume jurisdiction and proceed. *Floyd v. District Court*, 36 Nev. 349; 135 P. 922.

An inferior court which erroneously refuses to entertain jurisdiction on a matter preliminary to a hearing on the merits, may be required to proceed by mandamus. *Id.*

(B) ACTS AND PROCEEDINGS OF PUBLIC OFFICERS AND BOARDS AND MUNICIPALITIES

9. Ministerial acts.

Performance of a duty, enjoined upon an officer by law without leaving him any discretion in its performance, may be compelled by mandamus, if there be no other adequate remedy. *Mighels v. Eggers*, 36 Nev. 364; 136 P. 104.

The governor may be required to comply with an act of the legislature, approved by the chief executive at the time of its passage, which directs him to perform a ministerial duty which could have been enjoined upon any other officer or agent of the state, and which is in no way limited by or relates to the gubernatorial powers or privileges specified in the constitution. *State ex rel. White v. Dickerson*, 33 Nev. 540; 113 P. 105.

10. Specific acts.

In an action for the possession of personal property, the sheriff, after seizing it, redelivered it to the defendant, although defendant's sureties on his undertaking had not justified themselves before the clerk or the court as required by statute. The property still remained within the county. Held that, as Rev. Laws, 5127, requires the sheriff, upon receipt of the affidavit, notice, and written undertaking executed by the plaintiff, to take the property and retain it in his custody until delivery to plaintiff or redelivery to the defendant after justification of the latter's sureties, the sheriff will by an appropriate writ of mandamus be compelled to retake the property and deliver it to plaintiff; the defendant having waived exceptions to plaintiff's sureties and not having established his own right to a return. *State v. Lamb*, 37 Nev. 19; 138 P. 907.

11. Performance of ministerial duties.

As the supreme court is authorized to finally construe the laws, and is empowered by the constitution and statute to issue writs of mandamus, "to compel the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station," and as the lieutenant- and acting governor is in no way excepted from these provisions or empowered to abrogate the statute, a writ of mandamus will issue directing him to comply with the requirements of the act of the legislature and accept the bonds, the same as a writ would issue requiring any other officer or person to perform in compliance with the statute, a ministerial act, where no discretion is imposed and no constitutional provision is infringed. Otherwise, he could refuse, contrary to the statute, and merely for reasons of his own, to accept cash, or United States or other bonds, of the value of hundreds of thousands or millions of dollars, tendered for the benefit of the university, or schools, or charities of the state, or could decline to observe or obey any other act of the legislature, notwithstanding he is especially obligated by his oath and by the constitution to faithfully execute the laws. *State ex rel. White v. Dickerson*, 33 Nev. 540; 113 P. 105.

12. Proceedings relating to public lands.

Though a writ of mandate would lie to compel a townsitetrustee to make a deed to a claimant, as required by Comp. Laws, 345, on payment of the maximum amount which the trustee could impose, where the tender

is of a less amount, the writ will not lie. *Jennett v. Stevens*, 34 Nev. 128; 111 P. 601.

13. Issue of warrants or orders for payment.

Where the state controller refused to draw his warrant for the salary of a superintendent, employed by the board of directors for the Panama-Pacific and Panama-California expositions, pursuant to Stats. 1913, c. 128, he could not be compelled to do so by mandamus, the remedy being by action, notwithstanding section 6 of such act, making appropriations for the state's exhibits at such expositions, and providing that all disbursements from such appropriations should be on certificates of the exposition commissioner, approved by a majority of the directors and by the state board of examiners, when the state controller should draw his warrant and the state treasurer pay the same, as the controller is a constitutional officer and his duty to audit all claims against the state, except obligations fixed by law, is a constitutional one, and cannot be infringed upon by legislative enactment. *State v. Cole*, 38 Nev. 215; 148 P. 551.

14. Payment of debts and claims.

If a claim against the state for services authorized by law is presented, the amount of which has been fixed by law and an appropriation made therefor, the claim may be enforced by mandamus. *Mighels v. Eggers*, 36 Nev. 364; 136 P. 104.

15. Payment of debts and claims—Judgment.

Mandamus is an appropriate remedy to compel the industrial commission to pay a final judgment of compensation obtained by an injured workman in an action at law against the commission, where it refuses to pay such final judgment. *State v. Nev. Ind. Comm.*, 40 Nev. 220; 161 P. 516.

III. JURISDICTION, PROCEEDINGS, RELIEF

16. Time to sue, limitations, and laches.

Mandamus would not issue to compel county revenue officers to transmit the county assessment rolls and tax lists to the state tax commission for use at its session, commencing on the second Monday in October, until such time arrived, since such revenue officers were not in default until that time, and mandamus will not issue in anticipation of an officer's failure to perform a duty. *Tax Commission v. Douglas County*, 36 Nev. 319; 135 P. 609.

An application for mandamus to compel the secretary of state to accept and file certificates of nomination of presidential electors chosen at a Democratic party convention, brought before the expiration of the time provided for filing with the secretary of state certificates of nomination by convention, is premature and must be denied. *State v. Brodigan*, 34 Nev. 486; 125 P. 699.

17. Parties defendant or respondents.

In mandamus proceedings by the board of county commissioners to compel the county

auditor to make the joint report required by Rev. Laws, 3746, requiring the county auditor, jointly with the county treasurer, to make a report of the amount of collections, etc., the county treasurer was not a necessary party, where it appeared that he was willing to perform his part in making the report. *State v. Bonfield*, 37 Nev. 41; 138 P. 906.

18. Petition or complaint, or other application.

Where, in a mandamus proceeding by the state tax commission to compel county revenue officers to deliver or transmit to the commission the assessment rolls and tax lists of the county, the petition did not allege a demand upon the respondents, it would not be presumed that such a lawful demand would be refused. *Tax Commission v. Douglas County*, 36 Nev. 319; 135 P. 609.

19. Demurrer to petition or complaint, or to alternative writ.

In view of civil practice act, c. 73 (Rev. Laws, 5694-5707), prescribing the proceedings and practice in mandamus, and making the code provisions relative to civil actions applicable thereto, where a demurrer to a petition for mandamus is overruled, the defendant may answer to the merits. *Flaughan v. Burritt*, 41 Nev. 504; 173 P. 352.

20. Scope of inquiry and powers of court.

Doubtful questions relating to the legality or validity of, or right of recovery upon, bonds, or to their repudiation, or the statute of limitations, and which may be properly tried and adjudicated in an action between the holder and the obligor, need not be determined in the absence of the obligor in a proceeding for a writ of mandate requiring their acceptance by the chief executive preliminary to the bringing of a suit for the recovery of a judgment upon them against the obligor. It is not the duty of the chief executive nor of the courts upon application for writ of mandate to determine these questions in advance and possibly adversely to the acceptance of the bonds by the state and to their validity so as to set aside the statute and will of the legislature, prevent a suit, and deprive the proper tribunal, the Supreme Court of the United States, passing upon the objections made to the legality of the bonds. *State v. Dickerson*, 33 Nev. 540; 113 P. 105.

21. Performance and enforcement of command.

The lieutenant- and acting governor, having refused to accept, pursuant to the terms of the statute, repudiated bonds of the State of North Carolina, of the face value of over \$400,000, upon the ground, among others, that their acceptance would tend to disturb the friendly relations existing between the states and a writ of mandate requiring such acceptance having been ordered upon the eve of the convening of the legislature, the execution of the writ will be stayed in order to give that body, which has sole control of the legislative policy of the state

regarding matters of such public interest, an opportunity to determine whether it will, for the reasons advanced by the executive, or for other considerations, amend the law so that the acceptance of the bonds by the state will not be required. *Id.*

See Courts, 5, 7.

MARRIAGE

1. Power to regulate and control.
2. Marriage by mutual agreement.
3. Presumptions and burden of proof.
4. Question for jury.
5. Annulment—Alimony and allowance.

1. Power to regulate and control.

States have the right to deal with the marriage status of their own citizens. *Blakeslee v. Blakeslee*, 41 Nev. 235; 168 P. 950.

2. Marriage by mutual agreement.

As the common law prevails in Nevada with reference to the marriage relation, that relation may be formed by words of present assent, and without the interposition of any person lawfully authorized to solemnize marriage, or to join persons in marriage. *Parker v. De Bernardi*, 40 Nev. 361; 164 P. 645.

3. Presumptions and burden of proof.

Where cohabitation between man and woman was illicit in the beginning, though burden of proof is upon those asserting a valid marriage, there is no presumption that the relationship continued to be illicit, it being a matter of proof, and not of presumption, and a valid marriage under the common law may be shown by proof that the parties sustained toward each other the relation of husband and wife after the impediment of their marriage had been removed; the only presumption to be indulged in being in favor of a valid marriage, which may be based upon continuous cohabitation alone. *Id.*

4. Question for jury.

While prostitution or immorality might militate against the presumption of a legitimate common-law marriage, such facts are for the jury to consider under proper instructions, since, even though the woman were a prostitute, if a marriage of the highest and most sacramental order had been performed between the parties it would have had no more binding effect than a common-law marriage *per verba de presenti*, actually consummated. *Id.*

5. Annulment—Alimony and allowance.

Stats. 1861, c. 33, secs. 1, 18-21 (Rev. Laws, 2328, 2354-2357), respectively provide that marriage is a civil contract to which the consent of the parties is essential, and that, when fraud shall be proved, the marriage shall be void from the time when it is so adjudged by a court of competent jurisdiction, and that, when a marriage is supposed to be void or the validity is disputed, either party may file a complaint,

and proceedings shall be had thereon as in proceedings for divorce. Stats. 1861, c. 33, sec. 27, as amended by Stats. 1864-65, c. 14 (Rev. Laws, 5843), provides that in any suit for divorce the court may in its discretion at any time after the filing of the complaint require the husband to pay such sum as may be necessary to enable the wife to carry on and defend the suit, and for her support and that of her children during its pendency. An action was brought by a husband to annul a marriage for fraud, and the wife filed an affidavit denying its invalidity, and praying an allowance of alimony pendente lite. Held, that, though alimony cannot be allowed if the marriage in fact be void, the district court had jurisdiction to award temporary alimony. *Poupart v. District Court*, 34 Nev. 336; 123 P. 709.

See Alimony, 1; Divorce, 6.

MARSHALING ASSETS

1. Liens or claims against property or funds of different persons.
2. Release, assignment, or loss of rights.

1. Liens or claims against property or funds of different persons.

A bank, which held shares of stock in a mining company belonging to its president as collateral security for loans and advances to the company and such president, assigned the notes and indebtedness to another company and transferred the collateral. Upon the issuance of new notes, secured by the deed of trust of the mining company, the transferee delivered the stock held as collateral to the company, having previously refused to honor an assignment of a portion of the shares and an order for their delivery, executed by the owner of the shares. The mining company held the number of shares claimed by such assignee as security for the debt of its president, and released the remainder, which was about five times that of the number held, to such president. Held, that, as assignee of the former creditors, the company had the right to hold the collateral transferred to it for the payment of the notes, but as it was bound to first exhaust the security belonging to the principal debtor, which, being greater than that retained, must be considered to have been sufficient, the retention of the stock belonging to the person to whom it had been transferred was improper. *Elgan v. Keane Wonder Co.*, 34 Nev. 469; 125 P. 693.

2. Release, assignment, or loss of rights.

The doctrine of marshaling of assets, to the effect that a creditor cannot assert a lien on the property of a third person, where by his own negligence he has allowed other property in which the third person has no interest to become valueless, has no application, where a bank by its by-laws had a lien on corporate stock for debts due by an apparent stockholder, who had borrowed money and put up security, which the bank

allowed to become valueless, where the bank had no knowledge that a third person was the actual owner of the stock. *Wright v. Washoe County Bank*, 251 F. 819; 163 C. C. A. 653.

MASTER AND SERVANT

II. SERVICES AND COMPENSATION.

(B) *Wages and Other Remuneration.*

1. Actions for wages.

III. MASTER'S LIABILITY FOR INJURIES TO SERVANT.

(A) *Nature and Extent.*

2. Contracts limiting or releasing liability.

(B) *Tools, Machinery, Appliances, and Places for Work.*

3. Nature of master's duty and liability and care required.
4. Delegation of duty.
5. Custom and usage.
6. Mines, quarries and excavations.
7. Electric apparatus and structures.
8. Inspection and test.
9. Proximate cause of injury.

(E) *Fellow Servants.*

10. Nature of act and performance of duties.

(F) *Risks Assumed by Servant.*

11. Nature and extent.
12. Statutory provision.
13. Knowledge by servant of defect or danger.
14. Promise to remedy defect or remove danger.

(G) *Contributory Negligence of Servant.*

15. Statutory provisions.
16. Care required of servant.
17. Tools, machinery, appliances, or places for work—Knowledge of defects or dangers.
18. Tools, machinery, appliances, or places for work—Duty to discover or remedy defects or dangers.
19. Proximate cause of injury.

(II) *Actions.*

20. Declaration, complaint—Negligence on part of master.
21. Plea or answer.
22. Admissibility of evidence.
23. Admissibility of evidence—Negligence on part of master.
24. Admissibility of evidence—Contributory negligence of servant injured.
25. Weight and sufficiency of evidence—Negligence on part of master.
26. Weight and sufficiency of evidence—Assumption of risk by servant injured.
27. Weight and sufficiency of evidence—Contributory negligence of servant injured.
28. Questions for jury—Nature and cause of injury.
29. Questions for jury—Negligence on part of master.
30. Questions for jury—Assumption of risk by servant injured.

III. MASTER'S LIABILITY FOR INJURIES TO SERVANT—Contd.

(H) *Actions*—Contd.

31. Questions for jury—Contributory negligence of servant injured.
32. Instructions.
33. Instructions—Negligence on part of master.
34. Instructions—Assumption of risk by servant injured.

VI. WORKMEN'S COMPENSATION ACTS.

(A) *Nature and Grounds of Master's Liability.*

35. Defense to claims for compensation—Satisfaction or release.

(C) *Proceedings.*

36. Pleading.

II. SERVICES AND COMPENSATION

(B) WAGES AND OTHER REMUNERATION

1. *Actions for wages.*

Where an employee was, by his contract of employment, to receive as compensation a percentage of the profits of the business, a bill in equity for an accounting is not necessary, but an action of assumpsit at law will lie to enforce payment. *Goodin v. Pitt*, 36 Nev. 156; 134 P. 459.

III. MASTER'S LIABILITY FOR INJURIES TO SERVANT

(A) NATURE AND EXTENT

2. *Contracts limiting or releasing liability.*

Under Rev. Laws, 5652, providing that no contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor acceptance of any insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute a defense to an action for personal injuries or death, a release of an employer from liability for personal damages, damaging an employee in the sum of about \$1,200, in consideration of the payment of \$36, did not prevent a recovery of such damages, since the statute invalidates defenses based, not only on contracts made to cover future injuries, but defenses based upon acceptance of insurance, relief benefit, or indemnity by a person already injured, and the word "indemnity" means protection or exemption from loss or damage, past or to come, or immunity from punishment for past offenses. *Lawson v. Halifax-Tonopah M. Co.*, 36 Nev. 591; 135 P. 611; 138 P. 261.

(B) TOOLS, MACHINERY, APPLIANCES AND PLACES FOR WORK

3. *Nature of master's duty and liability and care required.*

An employer is only required to exercise reasonable care to furnish an employee a reasonably safe place in which to work and reasonably safe appliances with which to work, and to maintain this condition. *Konig v. N. C. O. Ry.*, 36 Nev. 185; 135 P. 141.

The master must furnish a reasonably safe place to work. *Peterson v. Silver Peak*, 37 Nev. 118; 140 P. 510.

A mining company must exercise reasonable care in providing an employee with reasonably safe appliances and machinery for his work. *Jones v. West End Con. M. Co.*, 36 Nev. 149; 134 P. 104.

4. Delegation of duty.

An employer, whose attention had been drawn to a defect in a machine operated by an employee, could not avoid the obligation to repair the defect by any rule imposing the duty of repair on the employee. *Konig v. N. C. O. Ry.*, 36 Nev. 184; 135 P. 141.

5. Custom and usage.

That it was customary to work through and sink in vertical mining shafts by means of a crosshead and bucket for raising and lowering employees did not justify a violation of Rev. Laws, 6799, requiring the use of an iron-bonneted safety cage; it not appearing that the apparatus used was generally and customarily regarded as better or safer than that provided by the statute. *Ryan v. Manhattan M. Co.*, 38 Nev. 92; 145 P. 907.

6. Mines, quarries and excavations.

A bucket and crosshead used in a mine for lowering and raising employees did not comply with Rev. Laws, 6799, requiring an iron-bonneted safety cage where a shaft is deeper than 350 feet, in view of sec. 4222, which provides that cages in shafts over 350 feet in depth shall be provided with sheet-iron or steel casing not less than one-eighth inch thick, or with a netting composed of wire not less than one-eighth in diameter, and with doors of the same material, provided, that when the cage is used for sinking only it need not be equipped with the required doors, as this completely describes what is termed in sec. 6799 an "iron-bonneted safety cage." *Id.*

Rev. Laws, 6799, making it unlawful to sink or work through any vertical mining shaft at a greater depth than 350 feet unless the shaft is provided with an iron-bonneted safety cage to be used in lowering and hoisting employees, was not complied with by having such a cage somewhere about the workings of the mine without using it, though the employees did not demand its use. *Id.*

7. Electric apparatus and structures.

Because of the tremendous potency and danger of electricity, an employer is held to extraordinary precaution for the safety of employees in the construction of machinery and appliances for its transmission. *Pacific Power Co. v. Sheaff*, 234 F. 553; 148 C. C. A. 319.

8. Inspection and test.

That a high voltage electric wire strung over a building was intended for a temporary purpose only, did not relieve the defendant from the duty of inspecting it, where

it was so strung that workmen would be likely to receive injury from coming in contact therewith. *Cutler v. Pittsburg Silver Peak*, 34 Nev. 46; 116 P. 418.

9. Proximate cause of injury.

An employer's noncompliance with Rev. Laws, 6799, requiring the use of iron-bonneted safety cages in mining shafts more than 350 feet deep, did not entitle an injured employee to damages, unless such noncompliance was the proximate cause of his injuries, and unless a compliance therewith would have avoided the accident and prevented the injuries. *Ryan v. Manhattan M. Co.*, 38 Nev. 92; 145 P. 907.

The failure of a mining company to provide an iron-bonneted safety cage for raising and lowering employees as required by Rev. Laws, 6799, was the proximate cause of injuries to an employee thrown from the bucket on which he was riding, though the swinging of the bucket against the sides of the shaft or its entanglement with a bell-cord were intervening agencies, as the culminating catastrophe would not have happened in the absence of either the omission of the safety appliance or the intervening agencies, and hence they operated concurrently. *Id.*

(E) FELLOW SERVANTS

10. Nature of act and performance of duties.

Under Workmen's Compensation Act, Nev. March 15, 1913 (St. 1913, c. 111), creating a presumption of negligence in cases of personal injuries to an employee in the course of his employment, and placing upon an employer declining to come within the act the burden of proof to rebut this presumption, there was no error in charging that, in determining whether the presumption had been overcome, the jury might properly consider all the evidence, both that of plaintiff and that of defendant. *O'Brien v. L. V. & T. R. Co.*, 242 F. 850; 155 C. C. A. 438.

(F) RISKS ASSUMED BY SERVANT

11. Nature and extent.

Where a servant is employed in performing labor which necessarily changes the character of the place for safety as the work progresses, and is consequently likely to become dangerous at any time, he assumes the risk. *Zelavín v. Tonopah Belmont*, 39 Nev. 1; 149 P. 188.

In an action brought in Nevada for personal injuries to an employee received in California, the provisions of the California statute abolishing the defenses of assumption of risk and contributory negligence can be applied. *Keane Wonder M. Co. v. Cunningham*, 222 F. 821; 138 C. C. A. 247.

12. Statutory provision.

An employee in a mine did not assume the risk of injury from an employer's failure to provide an iron-bonneted safety cage for lowering and raising employees as required by statute, though the same equipment was used for that purpose when he

applied for and accepted employment as at the time of the accident. *Ryan v. Manhattan M. Co.*, 38 Nev. 92; 145 P. 907.

If a mining company's failure to provide an iron-bonneted safety cage for raising and lowering employees as required by statute was found by the jury to be the proximate cause of injuries to an employee thrown from the hoist in use, assumption of risk and contributory negligence were out of the case, except that contributory negligence might be considered in mitigation of damages. *Id.*

In brakeman's action based on federal employers' liability act (U. S. Comp. St., secs. 8605-8605) for injuries by reason of railroad's use of defective coupler in violation of federal safety appliance act (U. S. Comp. St., secs. 8605-8612), the defense of assumption of risk held not available to railroad under federal employers' liability act, sec. 4 (U. S. Comp. St., sec. 8660). *Potter v. L. A. & S. L. R. R.*, 42 Nev. 370; 177 P. 933.

13. Knowledge by servant of defect or danger.

A miner assumes all the ordinary risks incident to his employment; but he does not assume any risks from danger resulting from defective hoisting machinery, over which he had no control, and of which he was ignorant. *Jones v. West End Con. M. Co.*, 36 Nev. 149; 134 P. 104.

While a miner must use reasonable care for his own safety, he does not assume the risk of a hidden danger created in his place of employment by other employees, over whom he has no control, and of which he has no warning or notice, so that a miner would not assume the risk of injury from drilling into an unexploded hole, left in that condition by a previous shift of workmen, of which he had no notice. *Peterson v. Silver Peak*, 37 Nev. 118; 140 P. 519.

14. Promise to remedy defect or remove danger.

Where an employee, noting a defect in machinery, complains thereof to the employer, who promises to remedy the defect, the employee, in reliance upon such promise, may continue in the service for a reasonable time without assuming the risk, unless the danger is so imminent and immediate that a person of ordinary prudence would refuse to continue in the service; but continuance in the service for a period of time beyond which it would be reasonable to expect that the promise would be kept defeats the employer's liability. *Konig v. N. C. O. Ry.*, 36 Nev. 184; 135 P. 141.

(G) CONTRIBUTORY NEGLIGENCE OF SERVANT

15. Statutory provisions.

Brakeman, injured in jumping from car after the uncoupling of car because of a defective coupler used in violation of federal safety appliance act (U. S. Comp. St., secs. 8605-8612), can recover against railroad notwithstanding his contributory neg-

ligence in jumping from car, under federal employers' liability act, sec. 3 (U. S. Comp. St., sec. 8659). *Potter v. L. A. & S. L. R. R.*, 42 Nev. 370; 177 P. 933.

16. Care required of servant.

In determining whether an employee recklessly exposed himself to danger, or exercised the care that a prudent person would exercise for his own personal safety, the imperfections of human reasoning and the peculiar conditions surrounding each particular case and each particular individual must be given consideration. *Konig v. N. C. O. Ry.*, 36 Nev. 183; 135 P. 141.

An employee is only required to exercise ordinary, and not extraordinary, diligence for his own safety. *Konig v. N. C. O. Ry.*, 36 Nev. 184; 135 P. 141.

17. Tools, machinery, appliances, or places for work—Knowledge of defects or dangers.

An employee cannot recover for injuries brought about by his own negligence in performing an act, the danger of which was so obvious and threatening that a reasonably prudent man under similar circumstances would have avoided them, if in his power to do so; he being deemed to have assumed the risks involved in such a reckless exposure of himself to danger. *Konig v. N. C. O. Ry. Co.*, 36 Nev. 183; 135 P. 141.

The law imputes no such knowledge of electricity to an electrician's helper that he is barred by contributory negligence from recovering for injury from high-tension electricity jumping to him from its conductor which he had nearly approached but had not touched. *Pacific Power Co. v. Sheaff*, 234 F. 553; 148 C. C. A. 319.

18. Tools, machinery, appliances, or places for work—Duty to discover or remedy defects or dangers.

A railroad employee's failure to discover that the tongue in the knuckle on a car was broken was not contributory negligence, where the tongue was broken on the previous day and the inspector failed to detect it. *Knock v. T. & G. R. R. Co.*, 38 Nev. 143; 145 P. 939; L. R. A. 1915F. 3.

19. Proximate cause of injury.

The rip-saw operated by plaintiff had become dished and would not run straight, as the result of which the material which was being sawed had a tendency to jump away from the saw. While plaintiff was sawing a buffer block, the saw started to buckle and tried to throw the block off. Plaintiff tried to push the block through, whereupon the saw pulled it from his hand, throwing it against him and injuring him. Held, that the defect in the saw, and not plaintiff's act in attempting to force the block against it, was the proximate cause of the accident. *Konig v. N. C. O. Ry.*, 36 Nev. 183; 135 P. 141.

In brakeman's action for injuries from use of defective coupler in violation of federal safety appliance act (U. S. Comp. St., secs. 8605-8612), causing brakeman to jump

upon uncoupling of car because of the excessive speed, the brakeman's contributory negligence in jumping was only a concurring cause of the injury. *Potter v. L. A. & S. L. R. R.*, 42 Nev. 370; 177 P. 933.

(H) ACTIONS

20. Declaration, complaint—Negligence on part of master.

In brakeman's action for injuries based on federal safety appliance act (U. S. Comp. St., secs. 8605-8612) and federal employers' liability act (U. S. Comp. St., secs. 8657-8665), complaint held to base plaintiff's right of recovery on railroad's negligence in having defective automatic coupler, and not on operation of cars at an excessive speed; the allegation of speed showing necessity of jumping from car after it became uncoupled. *Id.*

21. Plea or answer.

In an employee's action for injuries, assumed risk, if relied upon by defendant, must be specially pleaded. *Konig v. N. C. O. Ry.*, 36 Nev. 188; 135 P. 141.

22. Admissibility of evidence.

In an action against defendant zinc mining company for injuries to one employed as a mucker by an explosion, the court struck out an answer of the mine superintendent that plaintiff set off his shots about half an hour before the rest of the men, in answer to a question as to what occurred with regard to plaintiff's appointment as a miner on the sixth day of his employment. Held, that the court's ruling did not prevent defendant from directly asking witness why plaintiff's employment was changed on the sixth day after he was employed from that of miner to mucker; and hence was not erroneous as preventing it from showing such fact. *Hochschultz v. Potosi Zinc Co.*, 33 Nev. 198; 110 P. 713.

23. Admissibility of evidence—Negligence on part of master.

In an action for injuries to an employee in a mine caused by the failure to provide an iron-bonneted safety cage as required by Rev. Laws, 6799, evidence that the employer was unaware of the existence of such statute was not admissible. *Ryan v. Manhattan M. Co.*, 38 Nev. 92; 145 P. 907.

In an action for injuries to one employed as a mucker in a zinc mine by the explosion of a "missed shot," a question as to how many accidents occurred in the mine during a period of three years was properly excluded, where defendant was permitted to show that missed shots frequently happened in the mine; accidents from other causes being immaterial. *Hochschultz v. Potosi Zinc Co.*, 33 Nev. 198; 110 P. 713.

In a miner's action for injuries, rules posted at the mine, several months after the injury, by the state mining inspector, were not admissible in evidence by the mere fact that they were similar to the ones posted by defendant before the time of the injury. *Zelavin v. Tonopah Belmont*, 39 Nev. 1; 149 P. 188.

In an action for injuries to a driver of a gasoline motor car, sustained in endeavoring to close a drain cock, which was permitting the gasoline to escape and ignite, evidence that some eight or ten days after the accident the drain cock was defective, permitting gasoline to escape and ignite, should have been admitted, although plaintiff, not having possession of the machine or access thereto in the meantime, could not prove that there had been no intermediate change in the drain cock, as it was within defendant's power to produce evidence of any change in its condition, and the question of admissibility must be governed largely by the circumstances, the nature of the appliance, the material of which it is constructed, and the use to which it is devoted. *O'Brien v. L. V. & T. R. R. Co.*, 242 F. 850; 155 C. C. A. 438.

Plaintiff should also have been permitted to prove that when the car was turned over to a witness eight or ten days after the accident the drain cock was wired, since, while evidence of repairs or changes subsequent to the injury and precautions to prevent recurrence of like injuries is not admissible to show negligence, it is admissible as tending to show the condition of the appliance at the time of the accident. *Id.*

24. Admissibility of evidence—Contributory negligence of servant injured.

Contributory negligence on the part of an employee could not be proved by testimony as to what other persons did, might do, or were in the habit of doing under like conditions. *Konig v. N. C. O. Ry.*, 36 Nev. 185; 135 P. 141.

25. Weight and sufficiency of evidence—Negligence on part of master.

In an action for personal injuries received by a miner, evidence held sufficient to warrant the jury in finding that the owner was negligent in not making the place of work safe by knocking down loose ore hanging on the roof of a stope before the miner was put to work thereunder. *Kenne Wonder M. Co. v. Cunningham*, 222 F. 821; 138 C. C. A. 247.

26. Weight and sufficiency of evidence—Assumption of risk by servant injured.

The facts that a rip saw used by an employee was in a defective condition, which was known to the employee up to and including the time of the injury, and that he was injured as a result of the defective condition, did not in themselves prove that the rip saw was so openly and obviously dangerous that a reasonably prudent person would not have used it. *Konig v. N. C. O. Ry.*, 36 Nev. 186; 135 P. 141.

In an action by employee for injuries from electric shock from defectively constructed lightning arrester near which he was put to work without warning, evidence that he had some electrical experience, but that, although he knew of danger of direct contact with a live wire, he did not know

of danger that high-tension current would jump to a person approaching near it, that the lightning arrester was charged with a high current of electricity and its arms extended to within about 5 feet 9 inches of the ground, and that this height was improper and unsafe construction, supported verdict for plaintiff, as against claim of his assumption of risk and contributory negligence; a live wire not disclosing, by its appearance, its dangerous nature. *Pacific Power Co. v. Sheaff*, 234 F. 533; 148 C. C. A. 319.

27. Weight and sufficiency of evidence—Contributory negligence of servant injured.

Evidence in an action against a mining company for an injury to an employee, caused by the falling of a hoist bucket on which he was mounted, held to warrant a finding that the employee was not guilty of contributory negligence. *Jones v. West End Con. M. Co.*, 36 Nev. 149; 134 P. 104.

28. Questions for jury—Nature and cause of injury.

In an action for injuries claimed to have been caused by a defective rip saw binding and heating, and throwing the block which plaintiff was sawing against him, evidence held sufficient to make a question for the jury as to whether the accident occurred in the manner claimed. *König v. N. C. O. Ry.*, 36 Nev. 185; 135 P. 141.

29. Questions for jury—Negligence on part of master.

In an employee's action for injuries caused by the defective condition of the saw which he was operating, evidence held to make a question for the jury as to whether the defect had been called to the employer's attention. *König v. N. C. O.*, 36 Nev. 184; 135 P. 141.

30. Questions for jury—Assumption of risk by servant injured.

In an employee's action for injuries caused by the dished condition of a rip saw, evidence held sufficient to make a question for the jury as to whether the danger from such condition was so imminent and immediate that a reasonably prudent man should have refused to continue in the service in reliance on the employer's promise to repair. *Id.*

Where plaintiff, a carpenter, was not injured because of any dangerous place he made for himself in which to work, but by coming in contact with a defective electric wire, negligently maintained by defendant in the place in which defendant was directed to work, the place being already dangerous by reason of defendant's negligence, against which danger plaintiff had not been warned, he cannot be held to have assumed the risk as a matter of law. *Cutler v. Pittsburg Silver Peak*, 34 Nev. 46; 116 P. 418.

31. Questions for jury—Contributory negligence of servant injured.

In an employee's action for injuries

caused by a rip saw binding and heating, and throwing the block which he was sawing against him, evidence held to make a question for the jury as to whether he was negligent in attempting to push the block through, instead of drawing it back or turning off the power. *König v. N. C. O. Ry.*, 36 Nev. 183; 135 P. 141.

In an employee's action for injuries caused by a defective rip saw which he was operating, evidence held sufficient to make a question for the jury as to whether it was his duty to set and file the saws used by him. *König v. N. C. O. Ry.*, 36 Nev. 184; 135 P. 141.

In a miner's action for injuries from a falling rock, evidence held to make the question as to whether he himself loosened it one for the jury. *Zelavin v. Tonopah Belmont*, 39 Nev. 2; 149 P. 188.

32. Instructions.

In an employee's action for injuries, where defendant failed to plead contributory negligence or assumed risk, and therefore could rely thereon only so far as they might appear from plaintiff's case, an instruction that, where defendant relied on the defense that plaintiff assumed the risk by reason of the rip saw operated by plaintiff being so imminently and immediately dangerous that a reasonably prudent person, situated as the plaintiff was, would not have used it, this was an affirmative defense, the burden of establishing which by a preponderance of the evidence rested on the defendant, was sufficient so far as it went, although the court might properly have stated that if it appeared that plaintiff was the proximate cause of his own injuries, and had so conducted himself as to assume the risk, defendant was entitled to take advantage of that fact. *König v. N. C. O. Ry.*, 36 Nev. 186; 135 P. 141.

An instruction that, if plaintiff was in defendant's employ as a carpenter, and while using ordinary care in the discharge of his duty it became necessary for him to tear down a piece of corrugated iron sheeting from defendant's compressor house, and while so engaged, without negligence on his part, he was shocked and burned by a current of electricity which reached him, because of a defect in the insulation of an electric wire and the negligent placing of the wire, then under defendant's control, which broken and defective condition of the insulation of the wire and the negligent placing thereof was due to the defendant's negligent failure to maintain the wire in reasonably safe and proper condition, and same was known or might have been discovered by ordinary care and plaintiff warned of the danger but defendant negligently failed to make such inspection and warn plaintiff of the danger, and defendant's negligence was the proximate cause of the plaintiff's injury, he was entitled to recover, was proper. *Cutler v. Pittsburg Silver Peak*, 34 Nev. 45; 116 P. 418.

33. Instructions—Negligence on part of master.

In an employee's action for injuries, an instruction defining "ordinary care" as such care as a person of ordinary prudence usually exercised about his own affairs of ordinary importance was correct in the abstract and not misleading. *Konig v. N. C. O. Ry.*, 36 Nev. 187; 135 P. 141.

An instruction that it was the duty of an employer to use due care in providing an employee with safe machinery and in keeping and maintaining the machinery in such condition as to be reasonably and adequately safe for use was not erroneous, as requiring the employer to do more than to exercise reasonable care to furnish reasonably safe appliances, especially in view of a further instruction that an employer was not required to use more than ordinary care or diligence for the protection of employees, that he was not bound to provide the very best materials, implements, or accommodations which could be procured, nor those which are absolutely the most convenient or most safe, that his duty was sufficiently discharged by providing those which were reasonably safe and fit, and that he performed his whole duty by using as much care in furnishing instrumentalities for the use of his servants as a man of ordinary prudence in the same line of business, acting with a prudent regard for his own safety, would do in supplying similar things for himself, if he were doing the work. *Konig v. N. C. O. Ry.*, 36 Nev. 185; 135 P. 141.

34. Instructions—Assumption of risk by servant injured.

An instruction that if a servant, having the right to abandon the service, refrained from doing so in consequence of assurances that a danger would be removed, such assurance removed all ground for the argument that the servant, by continuing in the employment, engaged to assume the risks, was too narrow, since it failed to take into consideration the period of time during which the servant might reasonably rely on the promise to repair, and failed to make any mention of the servant's duty, where he knew that an accident was liable to occur. *Id.*

In an employee's action for injuries, an instruction that by "risks incident to the employment" was meant such risks as existed after the master had performed his full duty to his servant in furnishing instrumentalities, machinery, and appliances reasonably safe for the purpose for which they were intended, that this included keeping them in reasonably safe repair, that by the assumption of risk incident to the employment was not meant any additional or extra hazard, occasioned by the master's negligence in failing to keep his tools, machinery, and appliances in reasonably safe repair, was not erroneous or misleading. *Konig v. N. C. O. Ry.*, 36 Nev. 187; 135 P. 141.

In an employee's action for injuries, an instruction that it was for the jury to determine whether a defect in a saw was such that no one but a reckless millman, careless of his safety, would have operated it without it being repaired, was not objectionable because of the use of the word "reckless," as the court might have used the word "heedless," "careless," or "indifferent" with the same force and effect. *Konig v. N. C. O. Ry.*, 36 Nev. 186; 135 P. 141.

VI. WORKMEN'S COMPENSATION ACTS**(A) NATURE AND GROUNDS OF MASTER'S LIABILITY****35. Defense to claims for compensation—Satisfaction or release.**

Under the workmen's compensation act (Act of March 24, 1911, Stats. 1911, c. 183), sec. 11, allowing workmen to elect any other remedy at law, where a servant, a citizen and resident of California, executed in California a full and fair release of his master from liability for injuries received in his employment in Nevada, which was valid in California, it was a valid defense to action by him in Nevada for such injuries, notwithstanding Rev. Laws, 5052, providing that no acceptance of any insurance, relief benefit, or indemnity by the person entitled thereto shall constitute any bar to any personal injury action, for, the cause of action being transitory, and being completely barred in California, it was completely extinguished everywhere. *Leach v. Mason Valley M. Co.*, 40 Nev. 143; 161 P. 513.

(C) PROCEEDINGS**36. Pleading.**

A county cannot defeat the state industrial commission's action for moneys to compensate an injured employee of the county, on the theory that there is no money in the county treasury available, in the absence of an answer pleading such fact. *Nevada Ind. Comm. v. Washoe Co.*, 41 Nev. 437; 171 P. 511.

See *Electricity*, 1; *Street Railroads*, 1.

MATERIAL ISSUE

See *Appeal and Error*, 110.

MATRIMONIAL DOMICILE

See *Divorce*, 8.

MATTERS APPEARING ON FACE OF COMPLAINT

See *Pleading*, 8.

MATTERS INCLUDED IN JUDGMENT ROLL

See *Judgment*, 17.

MATTERS NOT AT ISSUE

See Appeal and Error, 81.

MATTERS OUTSIDE OF RECORD

See Appeal and Error, 87.

MATTERS REVIEWABLE

See Appeal and Error, 47, 64, 78, 84, 94, 109, 110; Certiorari, 3.

MATTERS REVIEWABLE ON APPEAL

See Criminal Law, 99.

MAXIMS OF EQUITY

See Equity, 2.

"MAY"

See Forcible Entry and Detainer, 2.

MAYHEM

1. Indictment and information.
2. Evidence.
3. Sentence and punishment.

1. Indictment and information.

Under Rev. Laws, 6416, defining mayhem to include slitting the ear of a human being, and in view of section 6417, stating that it is immaterial how the injury is inflicted, an information charging that accused bit off a portion of an ear of one C. is sufficient, though "slit" may be broader than "bite." *State v. Enkhouse*, 40 Nev. 1; 160 P. 23.

2. Evidence.

Evidence held to show permanent disfigurement so as to support conviction of mayhem. *Id.*

3. Sentence and punishment.

Since Rev. Laws, 6416, providing a maximum punishment for mayhem of fourteen years, does not provide a minimum, the judge may fix the minimum at five years, under section 7200, as amended by Stats. 1915, c. 157, providing that if no minimum is fixed, the court may fix it at one to five years. *State v. Enkhouse*, 40 Nev. 2; 160 P. 23.

MEANING OF WORDS IN STATUTES

See Constitutional Law, 4.

MEASURE OF DAMAGES

See Animals, 2.

MEASURE OF DAMAGES FOR CONVERSION

See Trover and Conversion, 5.

MECHANICS' LIENS**I. NATURE, GROUNDS AND SUBJECT-MATTER.**

1. Nature of lien.
2. Construction of lien law.

II. RIGHT TO LIEN.**(C) Agreement or Consent of Owner.**

3. Ownership or possession of land.
4. Notice by owner to prevent lien.

III. PROCEEDINGS TO PERFECT.

5. Time for filing claim or statement.
6. Form and contents of claim or statement—Description of property.
7. Form and contents of claim or statement—Ownership or possession of property.
8. Form and contents of claim or statement—Statement as to terms of contract.

IV. OPERATION AND EFFECT.**(C) Priority.**

9. Mechanics' liens on same property—Classification and order of preference.

VIII. ENFORCEMENT.

10. Nature and form of remedy.
11. Joinder of liens in same proceeding.
12. Evidence—Weight and sufficiency.
13. Sale, redemption.
14. Deficiency and personal liability—Personal judgment against owner.

I. NATURE, GROUNDS AND SUBJECT-MATTER**1. Nature of lien.**

The general theory upon which all labor liens are based is that they are remedial in their nature and intended to assist the laborer to obtain a just price for his services. *Lamb v. Lucky Boy M. Co.*, 37 Nev. 9; 138 P. 902.

Mechanics' liens are purely statutory. *Id.*

The object of the lien law is to secure payment to those who perform labor upon mining property, or who perform labor upon or furnish material for the construction of other works specified in the statute, for such labor performed or material furnished. *Ferro v. Bargo M. Co.*, 37 Nev. 139; 140 P. 527.

2. Construction of lien law.

While the mechanics' lien law should be liberally construed, it is a creature of statute; and, to enable one to acquire and enforce a right under it, there must be a substantial compliance with the statute. *Daly v. Labontan Mines Co.*, 39 Nev. 15; 151 P. 514; 158 P. 285.

II. RIGHT TO LIEN**(C) AGREEMENT OR CONSENT OF OWNER****3. Ownership or possession of land.**

The fact that an estate is in the course of administration will not prevent a lien claimant from obtaining a valid lien against the interest of an heir, as the property vested

in the heirs at law on the death of their ancestor. *Riverside Fixture Co. v. Quigley*, 35 Nev. 18; 126 P. 545.

4. Notice by owner to prevent lien.

Rev. Laws, 2213, provides for a lien, whether work is done or material furnished at the instance of the owner or his agent, and that every contractor, subcontractor, architect, builder, etc., in control shall be held to be the owner's agent. Sec. 2221 provides that every building or other improvement constructed with the knowledge of the owner shall be held to have been constructed at his instance, and his interest shall be subject to lien, unless within three days after he shall have obtained knowledge of the construction he shall give notice that he will not be responsible, by posting notice in writing on the land or building. Alterations were made on a building, and the contractors for the work with the owner ordered lumber. After work had been commenced, the owners posted a notice of non-liability. Held, that such notice could not affect the lien under sec. 2213, since sec. 2221 merely imposes an active duty upon the owner to repudiate liability for improvements made or materials furnished without his consent, and not to the case where the order is given by his agent. *Verdi Lumber Co. v. Bartlett*, 40 Nev. 317; 161 P. 933.

III. PROCEEDINGS TO PERFECT

5. Time for filing claim or statement.

Under the act of March 2, 1875 (Stats. 1875, c. 64), sec. 5, as amended March 6, 1903 (Stats. 1903, c. 32), which prior to the amendment of 1911 (Rev. Laws, 2217) provided that every original contractor, within sixty days, and every other person wishing to claim a lien thereon, within fifty days, after the completion of a building, improvement, or structure, should file for record a claim containing a statement of his demand, a claim, filed before the completion of a building by a subcontractor who furnished material and labor in the erection of the building, is valid and enforceable. *Self & Sellman Co. v. Savage*, 34 Nev. 332; 123 P. 333.

Where the original contract for the alteration and repair of a building under which a mechanics' lien was sought to be foreclosed contemplated only certain repairs, but there was no time limit during which they should be done, and other and additional repairs were made at various times, continuing for several months, a notice of mechanic's lien filed within six months of the completion of the last work of repair was filed in time; the contract being a continuing contract, although during the time there were several times at which the plaintiff was not actively engaged in the repairs. *Gaston v. Avansino*, 39 Nev. 128; 154 P. 85.

6. Form and contents of claim or statement—Description of property.

Though in a claim for lien filed the property on which the building stood for which

materials were furnished was insufficiently described, where the rights of no third persons had intervened and the description was the same as that used by the owner in his lease to the present holder, it was sufficient to charge the premises with the lien. *Riverside Fixture Co. v. Quigley*, 35 Nev. 17; 126 P. 545.

7. Form and contents of claim or statement—Ownership or possession of property.

Rev. Laws, 2217, provides that a lien claim shall recite the name of the owner or reputed owner, if known. Sec. 2215 provides that, if a person owns less than a fee simple estate, only his interest shall be subject to lien. Sec. 2221 provides that the interest of an owner of property, or one having an interest, may be subjected to a lien, where a building or improvement was constructed with his knowledge. A lien claim recited "that the above-mentioned 'L.' is the owner and reputed owner of said premises." The heirs of the former owner were minors, other than 'L.', who assumed not only to have an interest in the property, but to exercise control over the same. Held, the designation of such heir is sufficient to charge his interest for the entire lien. *Id.*

8. Form and contents of claim or statement—Statement as to terms of contract.

A lien for materials and labor furnished which contains a general statement as to their nature and the time of furnishing, together with a general statement of the sum due, sufficiently states the "terms, time given, or conditions of the contract." *Riverside Fixture Co. v. Quigley*, 35 Nev. 18; 126 P. 545.

IV. OPERATION AND EFFECT

(C) PRIORITY

9. Mechanics' liens on same property—Classification and order of preference.

By Rev. Laws, 2223, labor liens are preferred claims, and entitled to be paid out of the proceeds of the sale of the property in advance of other classes of lien claimants. *Daly v. Lahontan M. Co.*, 39 Nev. 15; 151 P. 514; 158 P. 285.

Rev. Laws, 2223, provides that, wherever liens are asserted against any property, the court in the judgment must declare their rank, placing liens for labor first. Sec. 2227 provides that, at the time of filing the complaint and issuing the summons in a lien action, the plaintiff shall notify all persons claiming liens on the premises to exhibit proof of their liens to the court. A mechanics' lienor for labor failed to exhibit his lien in a prior lien suit. Held that, so far as the plaintiffs in such suit and those who did exhibit their liens were concerned, he had waived his right under the statute to priority as a labor lienor. *Daly v. Lahontan M. Co.*, 39 Nev. 14; 151 P. 514; 158 P. 285.

VII. ENFORCEMENT

10. Nature and form of remedy.

The procedure under the mechanics' lien

statute should be liberal to the end of protecting the rights of all lien claimants. *Daly v. Lahontan M. Co.*, 39 Nev. 16; 151 P. 514; 158 P. 285.

11. Joinder of liens in same proceeding.

Under Rev. Laws, 2224, relating to consolidation of lien claims, a lien suit instituted by a labor lien claimant, in which others joined, should have been consolidated with other and prior suits against the same defendant. *Daly v. Lahontan M. Co.*, 39 Nev. 15; 151 P. 514; 158 P. 285.

In a suit to foreclose liens, the court, of its own motion, could have consolidated all lien actions pending, heard the proofs in the first action, and granted reasonable continuance for hearing of proofs in the others. *Daly v. Lahontan M. Co.*, 39 Nev. 16; 151 P. 514; 158 P. 285.

Trial courts, in actions to foreclose liens, where it appears that there are other lien claimants, and particularly that other suits are pending for the foreclosure of such other liens, should endeavor to protect the rights of all claimants in one judgment. *Id.*

Under Rev. Laws, 2227, providing that, at the time of filing the complaint and issuing the summons in a lien action, the plaintiff shall notify all persons claiming liens to exhibit proof, and that all liens not exhibited shall be deemed to be waived in favor of those exhibited, in an original lien suit, where no proofs were offered of liens involved in another and subsequent lien suit, no request made for consolidation of suits, and no appeal taken from the order refusing a continuance to the other lien claimants for the presentation of proofs, there was a waiver in favor of the liens involved in the original suit. *Id.*

12. Evidence—Weight and sufficiency.

In such case evidence held not to show fraudulent intent in making the final repairs so as to permit filing of lien after it should have expired. *Gaston v. Avansino*, 39 Nev. 128; 154 P. 85.

Evidence held insufficient to show that the contract was performed in a certain month, so as to make invalid a notice filed more than six months thereafter. *Id.*

Under the rule that one holding a lien will not be held to have waived it by an ambiguous agreement, evidence held insufficient to show a waiver of a mechanic's lien. *Id.*

13. Sale, redemption.

Two judgments were entered against a corporation in separate mechanics' lien actions, and the property sold under each judgment. The successor of the purchaser under the second judgment lost his right to the property as a redemptioner, when he failed to redeem from the first judgment within the statutory time, and before the issuance of the sheriff's deed to the purchaser thereunder. *Daly v. Lahontan M. Co.*, 39 Nev. 14; 151 P. 514; 158 P. 285.

14. Deficiency and personal liability—Personal judgment against owner.

In view of Rev. Laws, 2226, providing

that the mechanics' lien statutes shall not affect the right to a personal judgment in an action brought to enforce a mechanic's lien, a personal judgment may be rendered against a person, personally liable if the complaint contains all necessary facts constituting both grounds of relief, and all the necessary allegations of an action in assumpsit. *State v. Breen*, 41 Nev. 516; 173 P. 555.

In view of Rev. Laws, 2226, providing that the mechanic's lien statute shall not affect the right to a personal judgment in a mechanic's lien suit, such judgment may be rendered against one personally liable if the complaint contains all necessary facts constituting both kinds of relief, and all the necessary allegations of an action in assumpsit. *State v. Moran*, 42 Nev. 356; 176 P. 413.

See *Certiorari*, 3.

MEMBER OF LEGISLATURE AS STATE CONTRACTOR

See *States*, 3.

MEMBERS

See *Grand Jury*, 2, 3, 4.

MEMORANDUM OF ERRORS

See *Appeal and Error*, 18.

MEMORANDUM OF ERRORS ON MOTION FOR NEW TRIAL

See *Appeal and Error*, 26.

MEMORANDUM OF EXCEPTIONS

See *Appeal and Error*, 26, 49, 50.

MEMORY

See *Criminal Law*, 111.

MENTAL ANGUISH

See *Carriers*, 10, 11.

MENTAL CAPACITY

See *Acknowledgment*, 1; *Mortgages*, 2.

MERCHANDISE

See *Fraudulent Conveyances*, 1.

MILEAGE OF WITNESSES

See *Costs*, 4.

"MILITARY SERVICE"

See *Elections*, 1; *Statutes*, 18.

MILLING

See *Eminent Domain*, 2, 3.

MILL SITE

See *Waters and Watercourses*, 4, 14.

MINES AND MINERALS**I. PUBLIC MINERAL LANDS.****(B) Location and Acquisition of Claims.**

1. Lands open to location and acquisition.
2. Requisites and validity of location proceedings.
3. Requisites and validity of location proceedings—Discovery.
4. Requisites and validity of location proceedings—Extent and boundaries of claim.
5. Requisites and validity of location proceedings—Posting notice.
6. Requisites and validity of location proceedings—Certificate or declaratory statement.
7. Requisites and validity of location proceedings—Record.
8. Requisites and validity of location proceedings—Abandonment.
9. Requisites and validity of location proceedings—Forfeiture.
10. Requisites and validity of location proceedings—Relocation.
11. Requisites and validity of location proceedings—Conflicting locations.
12. Rights acquired.
13. Rights acquired—Extralateral rights under vein or lode location.
14. Actions to determine and establish rights.

(C) Patents.

15. Application and proceedings thereon.
16. Adverse claims, and proceedings thereon.
17. Construction and operation.
18. Conclusiveness.
19. Existence and enforcement of trust.

II. TITLE, CONVEYANCES AND CONTRACTS.**(A) Rights and Remedies of Owners.**

20. Recovery of possession of lands or mines.

(B) Conveyances.

21. Grants and reservations of mineral and mining rights.

(C) Leases, Licenses, and Contracts.

22. Requisites and validity.
23. Construction and operation of mining leases—Surrender, abandonment or forfeiture.
24. Construction and operation of mining leases—Testing or working.

III. OPERATION OF MINES, QUARRIES AND WELLS.**(C) Rights and Liabilities Incident to Working.**

25. Actions for labor or materials.
26. Liens—Nature, grounds, and subject-matter.
27. Liens—Right to lien.
28. Liens—Proceedings to perfect.
29. Liens—Enforcement.

I. PUBLIC MINERAL LANDS**(B) LOCATION AND ACQUISITION OF CLAIMS****1. Lands open to location and acquisition.**

Land legally segregated from occupancy

or appropriation may be conveyed by the United States government as a mining claim. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 392; 129 P. 308.

Where a claim to land legally segregated from occupancy or appropriation is conveyed, the government has no further right to patent a claim located wholly within its boundaries, since it cannot convey the same tract of land twice. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 393; 129 P. 308.

Every competent locator has the right to initiate a lawful claim to unoccupied public land by a peaceable adverse entry upon it while it is in the possession of those who have no superior right to acquire title or hold possession. *Nelson v. Smith*, 42 Nev. 302; 176 P. 261; 178 P. 625.

2. Requisites and validity of location proceedings.

Mining claim location which is invalid under act of Congress, May 10, 1872, secs. 2, 5 (U. S. Comp. St. 1916, secs. 4615, 4620), is also invalid under Rev. Laws, 2442. *Id.*

3. Requisites and validity of location proceedings—Discovery.

Under Comp. Laws, 209, as amended by Stats. 1901, c. 93, requiring the locator of a mining claim to sink a discovery shaft thereon, and providing that a cut equivalent in size to a shaft ten feet deep, is equivalent to a discovery shaft, and sec. 214, providing that relocation of abandoned claims shall be by sinking a new discovery shaft, or the relocater may sink the discovery shaft ten feet deeper than it was at the time of abandonment, etc., a locator of a mining claim on which an old tunnel had been run many years before, who cleaned out the tunnel for a distance of about thirty feet, and who drove the tunnel ahead five or six feet, and who thereby removed several times the quantity of earth or rock necessary to do work in new ground for the construction of a shaft or cut equivalent to a shaft, performed the statutory discovery work. *Murray v. Osborne*, 33 Nev. 267; 111 P. 31.

4. Requisites and validity of location proceedings—Extent and boundaries of claim.

The right to extend the lines of a mining claim over and across ground belonging to a prior location, and to hold segregated pieces of ground within the exterior boundaries of the location, not exceeding the maximum area of 1,500 by 600 feet allowed by law, appears to be settled. *Hornsilver Cases*, 35 Nev. 464; 130 P. 760, 764; 134 P. 448, 449.

Generally, where a claim is excessive in length, the claim is valid if the error is innocently made, but the excess is void. *Nelson v. Smith*, 42 Nev. 302; 176 P. 261; 178 P. 625.

5. Requisites and validity of location proceedings—Posting notice.

A certificate of location of a mining claim

duly recorded is prima facie evidence only of such facts as are required by law to be stated therein, provided they are sufficiently stated. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 546; 138 P. 71.

A certificate of location is not evidence of the fact of a discovery, and such certificate setting forth the date of location is not evidence of a discovery either upon that or any other date. *Id.*

The basis of a valid mining location is discovery, and the mere posting of a notice without discovery is of no force or effect so far as rendering invalid another subsequent location covering a portion of the same ground and based upon a valid discovery. *Id.*

6. Requisites and validity of location proceedings—Certificate or declaratory statement.

The description of a mining claim in a location certificate read: "To SW corner; thence northerly 500 ft. to N. side center post, 1,350 ft. to place of beginning." Held, that the failure to carry the boundary to the northwest corner was an apparent omission or clerical mistake if the claim was properly monumented at that corner. *Hornsilver Cases*, 35 Nev. 465; 130 P. 700, 704; 134 P. 448, 449.

A location certificate is not required to be strictly exact, and an apparent clerical mistake in describing courses and boundaries will be corrected or ignored. *Id.*

7. Requisites and validity of location proceedings—Record.

Failure to properly file a certificate or amended certificate of location does not affect the rights thereunder, but merely changes the burden of proof. *Indiana M. Co. v. Gold Hills M. Co.*, 35 Nev. 158; 126 P. 965.

8. Requisites and validity of location proceedings—Abandonment.

Abandonment of a location is largely, if not entirely, a question of intent. *Id.*

9. Requisites and validity of location proceedings—Forfeiture.

Forfeitures are not favored by the law, and are held to exist only when the facts clearly justify, so that the forfeiture of a mining location will not be declared merely because of the removal of the location monument where there was no intention to abandon. *Id.*

10. Requisites and validity of location proceedings—Relocation.

The location on ground, knowing it to be excess ground, within the staked boundaries of another claim initiated prior thereto, because law governing manner of making location had not been complied with, so that location covers the workings of the prior locators, is what in mining circles is known as "claim jumping." *Nelson v. Smith*, 42 Nev. 303; 176 P. 261; 178 P. 625.

Where public mineral land is open to location at the time a claim is initiated, the

location is valid, though the land is excess ground within staked boundaries of another claim, and though persons initiating claim had knowledge thereof. *Nelson v. Smith*, 42 Nev. 302; 176 P. 261; 178 P. 625.

11. Requisites and validity of location proceedings—Conflicting locations.

Vacant ground, formerly a portion of a location which has been extinguished by having its location monument and shaft included within the exterior boundaries of a patented claim, may not be held as an amended location of the original extinguished claim, but such an amended location or relocation of the original claim will be regarded as a new and independent location, and no rights can attach thereto by virtue of the extinguished location. *Indiana M. Co. v. Gold Hills M. Co.*, 35 Nev. 158; 126 P. 965.

Patenting of a mining claim containing within its surface boundaries, as patented, the location monument and shaft of another claim extinguishes the latter. *Id.*

A valid location of a mining claim cannot be made upon ground covered by a prior existing location or locations. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 546; 138 P. 71.

Where prior to the patent survey of a second mining claim and the moving of its line, the end of the line of the original claim was, on the making of the patent survey for that claim, moved so as to correspond with the call in the location notice and certificate, the owners of that claim have priority. *Indiana M. Co. v. Gold Hills M. Co.*, 35 Nev. 158; 126 P. 965.

The discovery point of a mining claim must be upon free territory. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 545; 138 P. 71.

The location of a mining claim, based upon a discovery of mineral within the limits of a valid existing claim, was void. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 392; 129 P. 308.

12. Rights acquired.

Where there is no valid location, there can be no right of possession under it. *Nelson v. Smith*, 42 Nev. 303; 176 P. 261; 178 P. 625.

13. Rights acquired—Extralateral rights under vein or lode location.

Where a mining claim containing the apex of a cross lode, lying entirely within the surface boundary of a prior claim or group owned by same party, is held invalid, the side-lines of the prior claim constitute end-lines in determining the extralateral rights on the cross vein, across which, as they extend vertically downward, the lode cannot be followed. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 392; 129 P. 308.

Rev. Stats. U. S. 2322, limiting extralateral rights to the part of a vein between vertical planes drawn downward through the end-lines, continued "in their own direction," does not negative extralateral rights in opposite directions; the end-lines

having two directions. *Jim Butler Co. v. West End Co.*, 39 Nev. 375; 158 P. 876; 1 Am. Law Rep. 405.

Within Rev. Stats. U. S. 2322, giving extralateral rights as to veins the tops or apexes of which are within the surface lines of the located claim, the crest of a vein in the form of anticlinal fold is the apex; a terminal edge not being necessary for an apex. *Id.*

As regards extralateral rights under Rev. Stats. U. S. 2322 (U. S. Comp. Stats. 1913, 4618) where a patented mining location is in the form of a parallelogram, except for the exclusion, for conflict, of a triangular piece at a corner, the remainder of what would have been the end-lines but for such exclusion is the end-line; the interior line of the excluded triangle being one, or a part of one, of the side-lines, and not part of a broken end-line. *Id.*

14. Actions to determine and establish rights.

In determining priority of mining claims, the declarations contained in the record, by which the subsequent patent was obtained, were admissible in the absence of proof that the record did not state the truth. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 392; 129 P. 308.

Where the location certificate of a junior mining claim recited that the claim was wholly within the boundaries of another claim, such certificate was sufficiently ambiguous or conflicting to cast upon the subsequent locator the burden of showing that the prior claim was invalid. *Id.*

In an equitable action to quiet title to a lode or vein, where the land department did not determine the question of priority of claims in the same group, but made a double grant of the conflicting area, appearing upon the face of the later patent, the district court had no jurisdiction to determine such priority. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 398; 129 P. 308.

Equity has the inherent power to order, in a pending case, a survey of the boundaries and underground workings of mines constituting the subject-matter of the suit. *National M. Co. v. District Court*, 34 Nev. 67; 116 P. 996.

In an equitable action to determine rights to mining claims, the invalidity of plaintiff's patent may be pleaded as a defense and tried upon the same principles as an original bill in equity. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 393; 129 P. 308.

A statute, empowering a court of equity, on a proper showing, to order, in the absence of a pending suit, a survey of the boundaries and underground workings of adjacent mines, is not unconstitutional. *National M. Co. v. District Court*, 34 Nev. 67; 116 P. 996.

In an equitable action to quiet title to a lode or vein which involves questions of extralateral rights not involved in the pro-

ceedings for patent, defendant, who filed no adverse thereto, is not estopped from questioning the validity of the location of the claim under which the plaintiff seeks to enforce such extralateral rights as against him. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 393; 129 P. 308.

In a suit to determine complainant's extralateral rights with reference to certain mining locations, evidence held to require a finding that the north vein at its apex and on its strike traversed complainant's West Virginia location from end to end, crossing both end-lines, dipping in a westerly direction, and in its downward course passed beyond the west side-line of that claim and beneath the surface of complainant's Charleston Fraction location to and across the west side-line thereof, and continuing in its downward course passed beneath the surface of defendant's West Virginia No. 1 location and Charleston No. 1 and the West Virginia Fraction, and that complainant was therefore entitled to extralateral rights along the vein under such claims. *National Mines Co. v. Charleston Hill Nat. Mining Syndicate*, 205 F. 787.

In actions begun in the state court, pursuant to Rev. St. secs. 2325, 2326 (Comp. St. 1916, secs. 4622, 4623), to determine contests over Nevada mining claims, which were removed to the federal court and consolidated, the refusal of instructions, requested by defendant, submitting the issue of adverse possession, which was raised by the evidence, was prejudicial error; limitations being a defense under the Nevada statutes applicable to actions to recover mining claims. *Ralph v. Cole*, 249 F. 81; 161 C. C. A. 133.

(C) PATENTS

15. Application and proceedings thereon.

Where the record does not contain the application for the patent nor a copy of the published notice, it will not be presumed, in the absence of a showing to the contrary, that such application or published notice is in conflict with the exclusions made in the field-notes of the deputy mineral surveyor. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 545; 138 P. 71.

Under section 38 of the regulations of the general land office providing that "The field-notes and plat are made a part of the application for patent," and section 130 of the same regulations providing that "The survey of a mining claim may consist of several contiguous locations, but such survey must * * * distinguish the several locations, and exhibit the boundaries of each," and section 153 of the same regulations providing that "When locations embraced in one survey conflict with each other, such conflicts should only be stated in connection with the location from which the conflict area is excluded," it is the duty of the deputy mineral surveyor to set forth in his field-notes the exclusions of the conflict area, and in favor of the claim or claims such exclusions are made. *Id.*

A patent to a group of mining claims does not simply describe the exterior boundaries of the land which is embraced by the group, but each location is described and each embraces a separate portion of the ground, to the exclusion of every other claim the same as if a separate patent issued for each particular location, and all conflicts are determined by the patent. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 547; 138 P. 71.

16. Adverse claims, and proceedings thereon.

When the general land office issued a group patent comprising five mining locations, and it appeared from the face of the patent that one of these claims, the Los Gazabo, was in conflict with each of the other claims known as the Sunnyside Nos. 1, 2, and 3, and the Sunnyside Fraction, the land office having full knowledge of the situation of these claims when it issued a patent to the group, including the Los Gazabo, the effect of the issuance of such patent was an adjudication of the validity of the location of the Los Gazabo. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 544; 138 P. 71.

Where the general land office issued a patent to a group of mining claims, one of which was entirely within the exterior boundaries of the other claims, except for a very small portion, about five one-hundredths of an acre in one corner, the fact that there is such portion outside the exterior boundaries of the other claims is evidentiary that the land office adjudicated such location to be valid, for otherwise this small portion of land included within the patent could find no support in the law. *Id.*

It will be assumed that patents to mining claims are issued upon surveys made under the direction of the United States surveyor-general. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 545; 138 P. 71.

The land department has jurisdiction to determine questions of priority as between conflicting lode locations embraced in the same group application. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 303; 129 P. 308.

17. Construction and operation.

Where a patent to a group of conflicting mining claims upon its face contains no express exclusions and where the total area granted by the patent accounts for the area in conflict but once, it is manifest that there is not a double grant of the conflict area, but such patent does not disclose upon its face which of the claims takes such conflict area. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 544; 138 P. 71.

Where a group patent to several claims in conflict discloses that the location point of one of the claims is within the conflict area, it will be conclusively presumed from the patent that the claim having its location point in conflict with another claim takes the conflict area as between two such claims. *Id.*

When construing a patent to a group of mining claims for the purpose of determining which claim, or claims, takes the conflict area, reference may be made to the field-notes of the deputy mineral surveyor referred to in the patent. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 546; 138 P. 71.

When a patent issues to a group of mining claims and therein refers to the field-notes, the exclusions contained in such field-notes become the exclusions of the government itself. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 545; 138 P. 71.

A patent to a mining claim relates back to the original location. *L. V. & T. R. R. v. Summerfield*, 35 Nev. 229; 129 P. 303.

The federal land office may make a valid grant of a mining claim in two noncontiguous pieces of ground, separated by a prior location. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 546; 138 P. 71.

18. Conclusiveness.

When an owner of a lode claim makes application for a patent and the owner of the claim in conflict seeks to challenge the former's priority of right on account of the date of discovery, he must bring an adverse suit, or the question, after patent, will be as to him concluded. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 544; 138 P. 71.

An entry, sustained by a patent, is conclusive evidence that at the time of the entry there had been a valid location. *Id.*

As the validity of a mining location granted by a patent from the general land office depends upon priority of discovery, and as it is incumbent upon such land office to determine all facts necessary to support the validity of the location patented, it must be conclusively presumed that such question was determined in favor of the patented location. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 546; 138 P. 71.

Failure to file an adverse claim within the time fixed by law operates as a waiver of all rights which were the proper subject of such a claim. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 543; 138 P. 71.

A mining patent is conclusive upon all matters which might have been the subject of an adverse claim. *Id.*

Upon the issuance of a patent to a mining claim, all matters which might have been tried under adverse proceedings are treated as adjudicated in favor of the patentee as fully as though judgment had been regularly rendered in his favor. *Id.*

Where there is any surface conflict whatever and there is a failure to adverse, after the patent has been issued to the applicant, the question of priority of title is conclusively determined in favor of the patentee. *Id.*

Notwithstanding a failure to assert adverse rights, an adverse claimant will not be estopped from making a protest in the federal land office, bringing to the notice of

the department any facts which tend to show noncompliance with the requirements of law. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 544; 138 P. 71.

The issuance of a patent by the land department after adjudication by the proper tribunal is conclusive and not subject to collateral attack as to all matters before the tribunal for adjudication and as to all persons who were parties to such adjudication, and hence, where the owner of a mining claim did not file an adverse to a subsequent application for patent, the land department's patent to the applicant is conclusive as to the rights of the parties to the surface ground included in the application. *Round Mt. Co. v. Sphinx Co.*, 35 Nev. 392; 129 P. 308.

An owner of a conflicting mining claim, who fails to institute adverse proceedings when another party has applied for patent for the conflicting area, or to protest in the land office against the granting of such patent, cannot be heard to contest questions of fact upon which the patent is based. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 547; 138 P. 71.

19. Existence and enforcement of trust.

Where under an agreement by defendant with plaintiff to relocate a mining claim in their joint names, defendant relocates the claim but omits plaintiff's name, defendant, in an action by plaintiff to recover his share of claim under the agreement, is estopped to deny the plaintiff's rights in the claim and cannot question the validity of the location. *Hornsilver Cases*, 35 Nev. 447; 130 P. 760, 764; 134 P. 448, 449.

Where a plaintiff, one of two coowners and locators of a mining claim, contracted with a defendant, whereby such defendant agreed to do the annual assessment work on the claim for the year 1909, and thus prevent a forfeiture, a trust relation was created; and when such defendant, in violation of his agreement, failed to do the work, and permitted a forfeiture, and then relocated the claim in the names of himself and two others, not including plaintiffs, plaintiffs could recover the relocated claim. *Hornsilver Cases*, 35 Nev. 464; 130 P. 760, 764; 134 P. 448, 449.

Where there is an oral agreement between plaintiff, a part owner of a mining claim, and one defendant, by which the latter was to perform the assessment work on the claim for 1909, and plaintiff was to convey to him an undivided one-fourth of the claim, and defendant was also to relocate another claim in the joint names of plaintiff and defendant in consideration of plaintiff's refraining from performing assessment work on the claim, a trust relation is created, and if defendant fails to perform the assessment work, and the first claim reverts to the public, and in relocating the second one he does not include plaintiff as one of the relocators, plaintiff can enforce the trust and recover the share which he

would have received had the defendant performed the contract. *Hornsilver Cases*, 35 Nev. 447; 130 P. 760, 764; 134 P. 448, 449.

II. TITLE, CONVEYANCES AND CONTRACTS

(A) RIGHTS AND REMEDIES OF OWNERS

20. Recovery of possession of lands or mines.

Under act of Congress July 26, 1886, c. 262, 14 Stat. 252, providing for the patenting of mining claims, Rev. Laws, 4951, providing that no action to recover mining claims shall be maintained unless plaintiff or those under whom he claims was seized or possessed of such claim within two years before the commencement of such action, and sec. 4952, providing that no cause of action upon title to real property shall be effectual unless the person prosecuting the action was seized or possessed of the premises in question within five years before the commission of the act in respect to which the action is prosecuted, and sec. 4953, referring to mining claims as such, enacted subsequent to the federal statute, applied to patented as well as unpatented mining claims, and an action to recover a patented claim must be commenced within two years from the time when plaintiff was seized or possessed of such claim. *Wren v. Dixon*, 40 Nev. 172; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

(B) CONVEYANCES

21. Grants and reservations of minerals and mining rights.

In an action to recover interests in the mining property under options, evidence held insufficient to sustain recovery on a theory of fraud, of continuing options, of the existence of a partnership, or of knowledge by defendants of the existence of such partnership. *Gamble v. Silver Peak*, 34 Nev. 351; 128 P. 111.

Reference to a mining claim as a placer instead of a lode claim, in an agreement for the sale of a portion of the surface, was immaterial where the property was otherwise so described as to leave no doubt as to what was intended. *L. V. & T. R. R. v. Summerfield*, 35 Nev. 229; 129 P. 303.

Grantees of a portion of the surface of a mining claim under mesne conveyances from the original locator are entitled to the possession of the surface so conveyed, under the rule that equity will control the patent title in favor of party holding the equitable title. *Id.*

If property has been acquired by fraud, or in utter disregard of the rights of others, and such property subsequently becomes of great value, the person defrauded would not for that reason alone be debarred from recovering possession, even though he reaped an increment entirely disproportionate to any efforts put forth by himself. *Gamble v. Silver Peak*, 34 Nev. 351; 126 P. 111.

Facts reviewed and are held to constitute laches. *Id.*

The doctrine of laches is not particularly applicable to mining transactions. As to such properties, parties interested are required to be active and vigilant in asserting their rights. *Id.*

Persons claiming an equitable interest in mining property under options after it has been made immensely valuable by the efforts of others must show good faith on their part, ability and readiness to perform their contract within the time fixed, and absence of laches. *Id.*

(C) LEASES, LICENSES, AND CONTRACTS

22. Requisites and validity.

An assignment of a one-third interest in a mining lease was a sufficient consideration for an agreement to bear one-third of expenses of developing mine, though the lease proved of no value. *Girton v. Daniels*, 35 Nev. 438; 129 P. 555.

23. Construction and operation of mining leases—Surrender, abandonment or forfeiture.

Under the common form of lease of undeveloped lode mining property, wherein the lessor seeks to have his property developed at lessee's expense, and the latter assumes such burden, the lessee, after discovering that future expenditures would be useless, may abandon the lease. *Id.*

24. Construction and operation of mining leases—Testing or working.

The act of December 17, 1862 (Stats. 1862, c. 37), authorizing any owner of any mine to sue for damages for improper mining by one in possession under a lease and for trespass to his mine, and providing for an application for an order for a survey of mines, and declaring that the costs of the order and survey shall be paid by the persons making the application unless they shall subsequently maintain an action and recover damages by reason of a trespass threatened prior to such survey, does not permit a survey of the boundaries and underground workings of the adjacent mines unless there is a pending suit involving such mines. *National M. Co. v. District Court*, 34 Nev. 67; 116 P. 996.

III. OPERATION OF MINES, QUARRIES AND WELLS

(C) RIGHTS AND LIABILITIES INCIDENT TO WORKING

25. Actions for labor or materials.

In an action to recover a balance claimed to be due on account of ore treated at defendant's mill, evidence held insufficient to sustain judgment for plaintiffs. *Richardson v. National Ore Co.*, 34 Nev. 455; 124 P. 779.

26. Liens—Nature, grounds, and subject-matter.

The lien law for securing payment for labor on mining property is not to be con-

strued strictly, as in derogation of common law, but liberally, as remedial. *Ferro v. Bargo M. Co.*, 37 Nev. 139; 140 P. 527.

While there must be a substantial compliance with the essential requisites of the statute in order to claim a laborer's lien, such pleadings and notices as the statute requires should be liberally construed to promote the object to be effected, and the statute in that respect should not be construed so technically as to destroy claimant's right to a lien. *Lamb v. Lucky Boy M. Co.*, 37 Nev. 9; 138 P. 902.

Persons performing labor in the development of mining property or to facilitate the extracting of ore have a lien upon the interest of the lessee and the owner. *Id.*

Rev. Laws, 2213, provides that all laborers and others who work upon any mine in an amount of \$5 or more, or furnish material, whether done or furnished at the instance of the owner or his agent, shall have a lien upon the mine for the value of the work or materials and that every contractor, subcontractor, or other person in charge of any mining claim shall be held to be the agent of the owner for the purposes of the chapter. Held, that one who furnished labor in developing a mine at the instance of a lessee was entitled to a lien on the property for his services, whether the lessee was a contractor working on the property in the interest of the owner, or whether, under the lease, the lessee and owner were both to share the benefits of the lessee's work. *Lamb v. Lucky Boy M. Co.*, 37 Nev. 10; 138 P. 902.

27. Liens—Right to lien.

Under Rev. Laws, 2221, providing that an improvement on land with the owner's knowledge shall subject the owner to a lien unless, within three days after his knowledge of the improvement, he gives notice that he will not be responsible therefor by posting a notice in writing to that effect in some conspicuous place upon the land, etc., a notice posted at the collar of a mine shaft, which the owner, when he entered into an agreement with the contractor, knew would necessarily be destroyed in preparing the shaft for mining operation, and which was so destroyed prior to the contractor's employment of the claimants, was not binding upon the claimants, as a notice must be so posted as, under ordinary conditions, it will remain a reasonable length of time, though a written notice in lead pencil would be as good as any other notice. *Phillips v. Snowden Co.*, 40 Nev. 67; 160 P. 786.

28. Liens—Proceedings to perfect.

The statute giving right of lien to both contractors and laborers, a lien claim against mining property is not void for joinder of a claim of lien under a contract of employment by the day with one under a contract of employment for a specified amount of work at an agreed price per foot; the work being continuous and of the

same character under both contracts. *Ferro v. Bargo M. Co.*, 37 Nev. 139; 140 P. 527.

Where under a joint contract of two for work on mining property, half the contract price is to be paid each severally, they need not join in a lien claim, but one of them may alone file such a claim for half the amount. *Id.*

29. Liens—Enforcement.

In a suit to foreclose mechanics' liens for work done under a contractor for mining work, brought in a justice's court, the allowance of costs to the plaintiff and intervening claimants in that court was erroneous. *Phillips v. Snowden Co.*, 40 Nev. 67; 160 P. 786.

Where the complaint, in an action to enforce a lien as against the owner upon mining property for services performed for the lessee, alleged that lease was executed by owner for purpose of developing and extracting ore from property, it must be presumed that owner had knowledge that laborers were being employed and materials furnished in developing the property under the lease. *Lamb v. Lucky Boy M. Co.*, 37 Nev. 9; 138 P. 902.

See Adverse Possession, 3; Appeal and Error, 122; Eminent Domain, 8; Evidence, 1, 11, 12; Principal and Agent, 10; Trial, 32.

MINES AND MINING

See Mines and Minerals.

MINIMUM SENTENCE

See Criminal Law, 78.

MINING CLAIM

See Limitation of Actions, 7.

MINING CLAIMS

See Executors and Administrators, 5.

MINISTERIAL ACTS

See Prohibition, 5.

MINOR HEIRS

See Limitation of Actions, 7.

MINORS

See Habeas Corpus, 10, 14; Justices of the Peace, 1; Limitation of Actions, 9.

MISCONDUCT

See Criminal Law, 64.

MISCONDUCT OF ATTORNEY

See Attorney and Client, 2, 3.

MISCONDUCT OF PRESIDING JUDGE

See Criminal Law, 82.

MISCONDUCT OF PROSECUTING ATTORNEY

See Criminal Law, 69.

MISDEMEANOR

See Habeas Corpus, 10; Libel and Slander, 11, 12, 13.

MISJOINDER

See Pleading, 17.

MISJOINDER OF CAUSES OF ACTION

See Action, 5.

MISLEADING INSTRUCTIONS

See Railroads, 2; Trial, 18.

MISTAKE

See Carriers, 15; Contracts, 2.

MITIGATION OF DAMAGES

See Husband and Wife, 12.

MODIFICATION OF DIVORCE DECREE

See Pleading, 6; Stipulations, 1.

MODIFICATION OF JUDGMENT

See Appeal and Error, 127; Costs, 16; Foreclosure Entry and Detainer, 3.

MODIFYING LEASE

See Landlord and Tenant, 3.

MONEY ADVANCED

See Joint Adventures, 2.

MONEY LENT

I. NATURE AND GROUNDS OF OBLIGATION.

1. Pleading.
2. Evidence.

I. NATURE AND GROUNDS OF OBLIGATION

1. Pleading.

A complaint, alleging that plaintiff "contributed" money to erection of a building, does not allege a loan. *Guisti v. Guisti*, 41 Nev. 349; 171 P. 161.

2. Evidence.

Evidence that defendant owed a third

person money; said he would pay if he could get the money; went with plaintiff's decedent to the bank; that the decedent withdrew \$600 from the bank; that the money was paid to the decedent; and that defendant on the same day paid the debt—is insufficient to support verdict for money lent. *Horgan v. Indart*, 41 Nev. 228; 168 P. 953.

MONUMENT

See Boundaries, 1.

"MONUMENT"

See Charities, 2.

"MOOT CASE"

See Appeal and Error, 70.

MORTGAGE OF HOMESTEAD

See Homestead, 2.

MORTGAGES

I. REQUISITES AND VALIDITY.

(A) *Nature and Essentials of Conveyances as Security.*

1. Absolute deed as mortgage.

(D) *Validity.*

2. Evidence.

III. CONSTRUCTION AND OPERATION.

(C) *Property Mortgaged, and Estates of Parties Therein.*

3. Acquisition of outstanding title or claim.

IV. RIGHTS AND LIABILITIES OF PARTIES.

4. Possession or control of property—Before default.

5. Rents and profits.

X. FORECLOSURE BY ACTION.

(I) *Judgment or Decree and Execution.*

6. Opening or vacating judgment or decree.

(M) *Review.*

7. Parties.

I. REQUISITES AND VALIDITY

(A) *NATURE AND ESSENTIALS OF CONVEYANCES AS SECURITY*

1. *Absolute deed as mortgage.*

Under civil practice act, sec. 576 (Rev. Laws, 5518), providing that a mortgage shall not be deemed a conveyance, so as to enable the owner of the mortgage to take possession without foreclosure and sale, a deed absolute in form, but given as security for a debt, is a mortgage, and will be regarded in equity as such; a "mortgage" not being an alienation, but mere security for a debt. *Yori v. Phenix*, 38 Nev. 277; 149 P. 180.

Where absolute deeds of certain real estate were executed solely to secure repayment of certain loans made by the grantee to the grantors, the property to be held by the grantee as his own until the loans were

repaid to him, the deeds were mortgages. *Alter v. Clark*, 193 F. 153.

(D) *VALIDITY*

2. *Evidence.*

Evidence held insufficient to show that a mortgagor was mentally incapacitated by intoxication at the time of drawing a mortgage. *Seeley v. Goodwin*, 39 Nev. 315; 156 P. 934.

The mere fact that signatures to a note and mortgage were poorly made is insufficient to show that the maker was intoxicated. *Id.*

Assuming that a subsequent purchaser of a mortgagor may assert the mortgagor's incapacity owing to intoxication at the time of drawing the mortgage, the degree of proof required to show such incapacity on his part is at least equal to that required from one asserting his own incapacity. *Id.*

III. CONSTRUCTION AND OPERATION

(C) *PROPERTY MORTGAGED, AND ESTATES OF PARTIES THEREIN*

3. *Acquisition of outstanding title or claim.*

A purchaser of mortgaged land from the mortgagor cannot acquire title as against the mortgagee by failing to pay the taxes and bidding in the property at the resulting tax sale. *U. S. F. & G. Co. v. Marks*, 37 Nev. 306; 142 P. 524.

IV. RIGHTS AND LIABILITIES OF PARTIES

4. *Possession or control of property—Before default.*

In a mortgage legal title is in the mortgagor, and the mortgagee holds only an equitable lien. *S. P. Co. v. Miller*, 39 Nev. 169; 154 P. 929.

5. *Rents and profits.*

A complaint for the collection of rents alleged that a deed, absolute in form, was given to plaintiff by a bank, and that plaintiff gave back to the grantor a written declaration that the premises were held as security for the repayment of money deposited in the bank by plaintiff and by another depositor; that, as part of the arrangement, it was agreed that plaintiff should have possession of the premises and the rentals thereof; and that the plaintiff thereafter took possession and notified the defendants of the transfer. Held, that complaint was based on the theory that plaintiff was a mortgagee in possession, not by virtue of the conveyance, but under an independent agreement therefor which had been executed, so that evidence of plaintiff's entry into possession after the date of the deed and the defence was improperly rejected. *Douglass v. Thompson*, 35 Nev. 196; 127 P. 561; Ann. Cas. 1914C, 920.

X. FORECLOSURE BY ACTION

(I) *JUDGMENT OR DECREE AND EXECUTION*

6. *Opening or vacating judgment or decree.*

Plaintiff in an action to foreclose a mortgage failed to file any affidavit that all taxes

on the money or debts secured had been paid, as required by Rev. Laws, 3756, which also provided that on motion of defendant the court should stay proceedings until such affidavit was filed or proof of payment of such taxes made, and that the court, before entering judgment, should require such affidavit or proof. Held, in the absence of a provision making a judgment void for failure to comply with the statute, that its purpose was only to aid in the enforcement of other tax laws, and that, as the objection went neither to a question of fraud upon the court nor the defendant mortgagor, it was not ground for setting aside a default judgment therein. *Nev. Con. M. Co. v. Lewis*, 34 Nev. 500; 126 P. 105.

(M) REVIEW

7. Parties.

In suit to foreclose a mortgage, a subsequent purchaser, whose right was defeated by execution sale, and the execution purchaser and his grantee, who had deeded the land to one defendant, were not necessary parties to an appeal, which would not be dismissed on that ground. *Seeley v. Goodwin*, 39 Nev. 315; 156 P. 934.

See Evidence, 15.

MOTION FOR CONTINUANCE

See Appeal and Error, 6, 84.

MOTION FOR NEW TRIAL

See Appeal and Error, 2.

MOTION FOR NONSUIT

See Trial, 10, 12.

MOTION TO DISMISS

See Appeal and Error, 73.

MOTION TO DISMISS CROSS-APPEAL

See Appeal and Error, 86.

MOTION TO SET ASIDE

See Arbitration and Award, 2.

MOTION TO STRIKE

See Appeal and Error, 84.

MOTION TO STRIKE ASSIGNMENT OF ERRORS

See Appeal and Error, 18.

MOTIONS

1. Notice—Form and requisites.
2. Vacating or setting aside orders.

1. Notice—Form and requisites.

If the statute does not provide for notice of a motion by publication, it would not be

any notice, and the order made thereon would be ex parte. *State v. Wildes*, 37 Nev. 55; 139 P. 505; 142 P. 627.

Publication of notice of a motion for ten days is not a service, and could not cut off or affect the rights of any party in interest unless such publication is authorized by statute. *State v. Wildes*, 37 Nev. 56; 139 P. 505; 142 P. 627.

2. Vacating or setting aside orders.

In a condemnation proceeding, defendant moved to set the proceeding down for hearing on the questions of whether the use to which the property was to be applied was one authorized by law and whether the taking of the property was necessary. The court evidently made an order setting the matter for hearing on January 21, and on that day defendants made an application to dismiss their former motion to set the matter for hearing. Held, that the court properly denied this application, as the motion to set the matter for hearing had been acted upon, and all that the court could have done would have been to vacate the order setting the matter for hearing, which it was not asked to do. *Goldfield Con. v. O. S. A. Co.*, 38 Nev. 426; 150 P. 313.

Civil practice act (Rev. Laws, 5367), sec. 425, providing that written notices and other papers, when required to be served on a party or his attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided, and district court rule 10, relating to service of notice, and rule 45, providing that motions to vacate orders may be made within six months on notice to the adverse party, are applicable to chancery proceedings. *State v. Wildes*, 37 Nev. 57; 139 P. 505; 142 P. 627.

MOTOR VEHICLES

See Municipal Corporations, 6.

MUNICIPAL CORPORATIONS

III. LEGISLATIVE CONTROL OF MUNICIPAL ACTS, RIGHTS AND LIABILITIES.

1. Nature and scope of legislative powers.
2. Municipal taxes and other revenue.

IV. PROCEEDINGS OF COUNCIL OR OTHER GOVERNING BODY.

(B) Ordinances and By-Laws.

3. Validity.
4. Construction and operation.

IX. PUBLIC IMPROVEMENTS.

(A) Power to Make Improvements or Grant Aid Therefor.

5. Constitutional and statutory provisions.

X. POLICE POWER AND REGULATIONS.

6. Concurrent and conflicting exercise of power.

XII. TORTS.

(C) Defects or Obstructions in Street and Other Public Ways.

7. Nature and grounds of liability.

XIII. FISCAL MANAGEMENT, PUBLIC DEBT, SECURITIES, AND TAXATION.

(A) Power to Incur Indebtedness and Expenditures.

8. Borrowing money.

(1D) Taxes and Other Revenue and Application Thereof.

9. Disposition for municipal purposes of taxes and other revenue.

III. LEGISLATIVE CONTROL OF MUNICIPAL ACTS, RIGHTS AND LIABILITIES

1. Nature and scope of legislative powers.

Cities are mere instrumentalities of the state for the convenient administration of government, and their powers may be qualified, enlarged, or withdrawn at the pleasure of the legislature. *City of Reno v. Stoddard*, 40 Nev. 537; 167 P. 317.

2. Municipal taxes and other revenue.

The revenues of a city raised by taxation, though levied for specific public purposes, may be applied by the legislature to other municipal uses, subject to constitutional limitations. *Id.*

IV. PROCEEDINGS OF COUNCIL OR OTHER GOVERNING BODY

(B) ORDINANCES AND BY-LAWS

3. Validity.

An ordinance violative of the provisions of a city charter, or of the general law, is void. *State v. Reno City Council*, 36 Nev. 334; 136 P. 110; 50 L. R. A. (N.S.) 195.

4. Construction and operation.

The fact that a proposed ordinance has been initiated by the electorate of a city adds no additional validity to such proposed ordinance. If it would not be valid if adopted by the city council, its infirmity would not be cured by an affirmative vote of the electors of the city. *Id.*

IX. PUBLIC IMPROVEMENTS

(A) POWER TO MAKE IMPROVEMENTS OR GRANT AID THEREFOR

5. Constitutional and statutory provisions.

Stats. 1915, c. 184, sec. 5, amending charter of city of Reno of March 16, 1903 (Stats. 1903, c. 102, as amended by Stats. 1905, c. 71), art. 12, sec. 10, by empowering the city council to levy and collect for general purposes a certain tax on the assessed value of real and personal property, 15 per cent of which should be set aside in a special fund to provide for a sewage-disposal plant or system for the city, was, as to such special fund, repealed by Stats. 1917, c. 76, amending sec. 5 "to read as follows," and omitting the provision for such special fund. *City of Reno v. Stoddard*, 40 Nev. 537; 167 P. 317.

X. POLICE POWER AND REGULATIONS

6. Concurrent and conflicting exercise of power.

Stats. 1913, c. 206, regulating automobiles

or motor vehicles on the public roads and streets, providing a license for the operation thereof, and in sec. 15 providing that the act shall in no wise affect any statute now existent nor that may thereafter be enacted providing for the licensing of automobiles for hire, does not interfere with the power of a city to license and regulate the use of jitney busses. *Ex Parte Counts*, 39 Nev. 61; 153 P. 93.

XII. TORTS

(C) DEFECTS OR OBSTRUCTIONS IN STREET AND OTHER PUBLIC WAYS

7. Nature and grounds of liability.

In an action against a city for personal injuries resulting from plaintiff's falling into an excavation made in a street, although the act of incorporation of the city may have given to the city trustees exclusive power to regulate its streets, drains, etc., yet where it appeared that for some years the city had paid the bills which were approved by the city trustees for street work done by the city marshal and had permitted him to do such work, it must be presumed that it authorized him to make the excavation in question rendering the city liable for his negligence. *Barnes v. City of Carson*, 33 Nev. 17; 110 P. 3.

XIII. FISCAL MANAGEMENT, PUBLIC DEBT, SECURITIES, AND TAXATION

(A) POWER TO INCUR INDEBTEDNESS AND EXPENDITURES

8. Borrowing money.

Rev. Laws, 978, providing that in cases of great necessity or emergency, the governing body of a town or city may, by unanimous vote and with the approval of the state board of revenue, authorize a temporary loan to meet such necessity or emergency, does not authorize a city organized under a special charter, which as amended by Stats. 1907, cc. 29, 146, gave the trustees power to improve its streets and to issue bonds subject to the right of the voters to petition for a special election on the question, to make a temporary loan to pay for the paving of street intersections on its main street, since "great necessity or emergency" means something greatly out of the ordinary, which could not be met by the usual machinery of the government, immediately indispensable, and does not include what is merely essential in the sense of being convenient. *Chartz v. Carson City*, 39 Nev. 285; 156 P. 925.

(D) TAXES AND OTHER REVENUE AND APPLICATION THEREOF

9. Disposition for municipal purposes of taxes and other revenue.

The provision of the last amendatory act that all moneys held in any special fund might be transferred to the city's general fund authorized the transfer of the special sewage-disposal fund created by Stats. 1915,

c. 184, sec. 5, to the city's general fund.
City of Reno v. Stoddard, 40 Nev. 537; 167 P. 317.

See Constitutional Law, 35.

MUNICIPAL COURT

See Criminal Law, 2, 3, 4.

MUNICIPAL ORDINANCE

See Criminal Law, 2, 3.

MURDER

See Criminal Law, 61; Homicide, 6, 15, 17, 23, 28.

MUTUAL DUTIES OF MEMBERS

See Joint Adventures, 2.

MUTUAL PROMISES

See Joint Adventures, 1.

NATURAL LAWS

See Evidence, 22, 25.

NATURE OF LACHES

See Equity, 3.

NATURE OF LAW OF OTHER STATE

See Judgment, 35.

NATURE OF PLEADING

See Pleading, 1.

NATURE OF POWERS

See Municipal Corporations, 1.

NATURE OF WRIT OF PROHIBITION

See Prohibition, 8.

"NEAR"

See Charities, 3.

NECESSARY PARTIES

See Mortgages, 2, 7.

NECESSITY FOR CALLING ALL EYEWITNESSES

See Criminal Law, 58.

NECESSITY OF ANSWER

See Divorce, 15.

NECESSITY OF CONDEMNATION

See Eminent Domain, 4, 11.

NECESSITY OF COURT ORDER

See Executors and Administrators, 5.

NECESSITY OF NOTICE

See Assignments, 1.

"NEGATIVE TESTIMONY"

See Evidence, 23.

NEGATIVE WORDS

See Statutes, 41.

NEGLECT

See Dismissal and Nonsuit, 1, 2.

NEGLIGENCE

I. ACTS OR OMISSIONS CONSTITUTING NEGLIGENCE.

(C) *Condition and Use of Land, Buildings and Other Structures.*

1. Care as to licensees or persons invited.

II. PROXIMATE CAUSE OF INJURY.

2. Nature and probable consequences.

3. Nature and probable consequences—Consequences that should have been foreseen.

III. CONTRIBUTORY NEGLIGENCE.

(A) *Persons Injured.*

4. Acts in emergencies.

(D) *Comparative Negligence.*

5. Relative degrees of negligence of parties.

IV. ACTIONS.

(A) *Right of Action, Parties. Preliminary Proceedings, and Pleadings.*

6. Declaration, complaint or petition—Negating contributory negligence or other fault.

7. Issues, proof and variance.

(B) *Evidence.*

8. Admissibility.

9. Admissibility—Similar facts or transactions.

(C) *Trial, Judgment, and Review.*

10. Questions for jury.

11. Instructions—Negligence.

12. Verdict and findings.

I. ACTS OR OMISSIONS CONSTITUTING NEGLIGENCE

(C) CONDITION AND USE OF LAND, BUILDINGS AND OTHER STRUCTURES

1. Care as to licensees or persons invited.

In an action for injuries from being struck by lumber thrown from a car by a lurch due to a defect in the track belonging to defendant and used by plaintiff's employer, that plaintiff was in the employ of a person sustaining the relation of an independent contractor to defendant constituted no defense. *Flodin v. Verdi Lumber Co.*, 37 Nev. 204; 142 P. 531.

Where a lumber company owning a defective railroad track furnishes same to an independent contractor to enable him to carry out his contract, and the defective condition is, or, in the exercise of ordinary care, might have been known to the company, and where an employee of the independent contractor is injured, as a proximate result of such defect, while he is in the discharge of his duty and in the exercise of ordinary care for his own safety, the company is liable for such injury. *Id.*

II. PROXIMATE CAUSE OF INJURY

2. Nature and probable consequences.

Where a succession of events are so linked together as to make a natural whole, and all so connected with the first event as to be in legal contemplation, the natural result thereof, the first negligent act is the proximate cause of the resulting catastrophe, although there may be intervening agencies, one of which is the act of the party injured. *Konig v. N. C. O. Ry.*, 30 Nev. 183; 135 P. 141.

3. Nature and probable consequences—Consequences that should have been foreseen.

Where the first wrong done is the probable cause of an injury or accident, and the final injurious consequences are such as might have been foreseen, the consequence, as well as every intervening result, is the proximate result of the first wrongful cause. *Id.*

Where a new cause intervenes between the first wrongful cause and the final injurious consequences, which is not under the control of the first wrongdoer, and which he could not with reasonable diligence have foreseen, and except for which the final catastrophe could not have happened, the final result is too remote to furnish the basis of an action. *Id.*

III. CONTRIBUTORY NEGLIGENCE

(A) PERSONS INJURED

4. Acts in emergencies.

One exposed to sudden danger is not chargeable with negligence simply because he does not adopt the safest course to avoid the injury. *Vascacillas v. S. P. Co.*, 247 F. 8; 159 C. C. A. 226.

(D) COMPARATIVE NEGLIGENCE

5. Relative degrees of negligence of parties.

Rev. Laws, 5651, providing that, in actions against a mine owner for damages for injuries to an employee, the employee's contributory negligence shall not bar a recovery, where it was slight and the employer's negligence was gross in comparison, substitutes for the common-law rule of contributory negligence the rule of relative or comparative negligence. *Peterson v. Silver Peak*, 37 Nev. 118; 140 P. 519.

IV. ACTIONS

(A) RIGHT OF ACTION, PARTIES, PRELIMINARY PROCEEDINGS, AND PLEADINGS

6. Declaration, complaint or petition—Negating contributory negligence or other fault.

In an action for damages for personal injuries, contributory negligence is a matter of defense, and plaintiff need not allege that the injury was caused without his fault, unless in stating his cause of action he details facts disclosing *prima facie* that he was guilty of contributory negligence or that his acts were the proximate cause of the injury, in which case he must allege that the injuries occurred without his fault. *Konig v. N. C. O. Ry.*, 36 Nev. 182; 135 P. 141.

7. Issues, proof and variance.

Where plaintiff's evidence discloses contributory negligence, defendant may take advantage thereof by a motion for a nonsuit or a directed verdict, or in the argument to the jury, even though contributory negligence has not been pleaded; but if plaintiff's evidence does not show contributory negligence as a matter of law, defendant cannot introduce additional evidence to show such negligence. *Id.*

Contributory negligence must be specially pleaded as an affirmative defense, and cannot be proved under a general denial, and a denial that plaintiff was exercising ordinary care and diligence, or any care and diligence, or that he was without fault or negligence, as unnecessarily alleged by him, did not raise such issue. *Id.*

(B) EVIDENCE

8. Admissibility.

In an employee's action against one to whom the employer sustained the relation of an independent contractor, evidence that the defective track causing plaintiff's injury was used by defendant was not objectionable as leading the jury to believe that such use placed on defendant the duty to keep the track in a safe condition, where defendant was liable for furnishing a defective track for the contractor's use, even though it had not used the track at the same time. *Flodin v. Verdi Lumber Co.*, 37 Nev. 294; 142 P. 531.

9. Admissibility—Similar facts or transactions.

Where the evidence in an employee's action for injuries showed that the injury resulted from being struck by lumber thrown from a car due to a defective track, evidence that lumber had slipped from the car because of insecure loading at other times was properly excluded. *Id.*

(C) TRIAL, JUDGMENT, AND REVIEW

10. Questions for jury.

Where plaintiff's evidence shows contributory negligence without any dispute, or so

conclusively that the court, in the exercise of a sound judicial discretion, would be compelled to set aside a verdict for plaintiff, a verdict for defendant should be directed; but where it only tends to show contributory negligence, or only raises an inference thereof, the question should be submitted to the jury. *Konig v. N. C. O. Ry.*, 36 Nev. 182; 135 P. 141.

11. Instructions—Negligence.

In an employee's action for injuries, an instruction that "negligence" was the want of such attention to the nature or the probable consequence of an act or omission as a reasonably prudent person ordinarily bestowed in acting in his concerns of like importance, although it might have been differently worded, was not erroneous or misleading, or open to the construction that, if plaintiff's injuries were the consequence of defendant's omission, then a want of attention to such injuries constituted negligence. *Konig v. N. C. O. Ry.*, 36 Nev. 187; 135 P. 141.

12. Verdict and findings.

Special finding that defendant's conduct was "careless disregard" for plaintiff's safety rebuts assumption that its act was "wilful," "wanton," or "aggravated misconduct" or "reckless disregard" of his safety. *Crosman v. Southern Pacific Co.*, 42 Nev. 92; 173 P. 223.

See Carriers, 13, 14, 19.

NEGLIGENCE AND FRAUDULENT DEALINGS

See Action, 5.

NEGLIGENCE OF RAILROAD

See Master and Servant, 12, 15, 19, 20.

NEGOTIABLE NOTES

See Counties, 8.

NEGOTIATIONS

See Sales, 2.

NEVADA WATER LAW

See Constitutional Law, 45.

"NEW MATTER"

See Pleading, 11.

NEW MATTER AS DEFENSE

See Pleading, 11.

NEW STATEMENT ON APPEAL

See Appeal and Error, 57.

NEW TRIAL

II. GROUNDS.

(D) *Disqualification or Misconduct of or Affecting Jury.*

1. Misconduct of others affecting jury—Parties or counsel.

(H) *Newly Discovered Evidence.*

2. Diligence in procuring evidence.

3. Relevancy, materiality, and competency.

4. Sufficiency, and probable effect.

III. PROCEEDINGS TO PROCURE NEW TRIAL.

5. Time for application—Stipulation as time and waiver of objections to delay.

6. Statement of grounds.

7. Bill of exceptions, or statement of facts.

8. Notice of motion.

9. Affidavits as to newly discovered evidence—Necessity and sufficiency.

10. Hearing.

11. Determination.

12. Ground not urged.

II. GROUNDS

(D) *DISQUALIFICATION OR MISCONDUCT OF OR AFFECTING JURY*

1. Misconduct of others affecting jury—Parties or counsel.

That the attorney for the successful parties dined at the same table with a juror in a hotel does not alone justify the setting aside of the verdict. *Knock v. T. & G. R. R. Co.*, 38 Nev. 143; 145 P. 939; L. R. A. 1915F, 3.

(H) *NEWLY DISCOVERED EVIDENCE*

2. Diligence in procuring evidence.

Where the alleged newly discovered evidence would consist of the testimony of witnesses who resided at the place of trial and were present at the trial to the knowledge of the moving party, or who testified as witnesses in the case, sufficient showing of diligence is not made out. *Robinson M. Co. v. Riepe*, 37 Nev. 28; 138 P. 910.

It is not abusive of discretion to refuse a new trial upon alleged newly discovered evidence where such new evidence is only of an impeaching character. *Id.*

3. Relevancy, materiality, and competency.

Newly discovered evidence on a matter collateral to the issues is seldom ground for a new trial. *Whise v. Whise*, 36 Nev. 16; 131 P. 967; 44 L. R. A. (N.S.) 689.

The alleged newly discovered evidence must be material or important to the party seeking a new trial. *Id.*

4. Sufficiency, and probable effect.

Newly discovered evidence, which could only be used by way of impeachment, is not ground for granting a new trial, unless evidence of the witness sought to be impeached was so important, and the impeaching evidence so convincing, that a different

result would necessarily follow the admission of the impeaching evidence. *Id.*

In order to compel the granting of a new trial, the newly discovered evidence must be so strong as to make it probable that a different result would be obtained in another trial; it not being sufficient that it "might" change the result. *Id.*

III. PROCEEDINGS TO PROCURE NEW TRIAL

5. Time for application—Stipulation as to time and waiver of objections to delay.

Though the provisions of Cutting's Compilation, sec. 3292, authorizing an enlargement of the time for service and filing of a motion for a new trial by stipulation of the parties, or on good cause shown, by the court or judge before whom the cause was tried, was not carried forward into the Revised Laws, yet where the parties stipulated for an extension of time beyond the ten days specified in Rev. Laws, 5323, within which the defendant might serve and file his notice of intention to move for a new trial, such stipulation was a waiver of plaintiff's right to object that the motion was not in time. *Torp v. Clemons*, 37 Nev. 474; 142 P. 1115.

Where respondents became a party to an order of the trial court extending the time in which plaintiff might file his notice of intention to move for a new trial, they thereby waived any objection on the ground that such notice was not served within the time prescribed by law. *Green v. Hooper*, 41 Nev. 13; 167 P. 23.

A party may waive his right to object to any of the proceedings preliminary to a motion for a new trial, or that they have not been taken, filed, or served within the time prescribed by rule or statute. *Id.*

6. Statement of grounds.

Rev. Laws, 5323, provides that the party intending to move for a new trial must, within five days after any verdict, or within ten days after a decision of the court or referee, file with the clerk, and serve upon the adverse party, a notice of his intention, designating the grounds upon which the motion will be made and whether upon affidavits or upon the minutes. Section 5320 provides that the former verdict or other decision may be vacated, and a new trial granted, for "insufficiency of the evidence to justify a verdict or other decision, or that it is against law." Section 5321 provides that in an application for a new trial it shall be sufficient to state one or more grounds as specified in the preceding section, provided that, when the application is made upon subdivisions 1, 2, 3, or 4 of the preceding section, it must be supported by affidavit. In all other cases it must be made upon the minutes of the court. Held that, as motion for a new trial for insufficiency of evidence can be made only on the minutes of the court, a motion for new trial "on the ground of insufficiency of the evidence to justify the decision, judg-

ment, and findings of fact and conclusions of law" is sufficient, although it failed to state that the motion would be made on the court minutes. *Saval v. Blume*, 41 Nev. 212; 168 P. 909.

7. Bill of exceptions, or statement of facts.

An ex parte order, extending, as authorized by Rev. Laws, 5322, the time within which the mover for a new trial shall serve on the adverse party a memorandum of exceptions and errors, though properly granted, is without effect until notice thereof has been given the adverse party, as required by district court rule 36. *Bevo v. Tonopah Ext. M. Co.*, 37 Nev. 199; 141 P. 453.

8. Notice of motion.

Upon a proper showing, held, that the court might have permitted an amendment to the notice of motion for a new trial. *Whise v. Whise*, 36 Nev. 16; 131 P. 967; 44 L. R. A. (N.S.) 689.

9. Affidavits as to newly discovered evidence—Necessity and sufficiency.

Where, on motion for new trial on the ground of newly discovered evidence, the affidavit of the moving party merely stated conclusions as to exercise of diligence, without setting out the facts, so that the court could draw its own conclusions, it was insufficient. *Robinson M. Co. v. Riepe*, 37 Nev. 27; 138 P. 910.

10. Hearing.

On defendant's motion for new trial for insufficiency of the evidence, the evidence given by defendant will be considered as well as that given for plaintiff. *Hochschultz v. Potosi Zinc Co.*, 33 Nev. 198; 110 P. 713.

11. Determination.

Under the statute making insufficiency of the evidence to justify the verdict ground for a new trial, the refusal of the trial judge to pass on such ground in support of a motion for new trial is error. *Goldfield Mohawk M. Co. v. Frances-Mohawk M. Co.*, 33 Nev. 491; 112 P. 42.

12. Ground not urged.

A ground of motion for a new trial not urged will not be considered. *Dunlap v. Montana-Tonopah M. Co.*, 192 F. 715; aff. 196 F. 612; 116 C. C. A. 286.

See Appeal and Error, 29, 100; Criminal Law, 85, 96, 104.

NIGHTTIME

See Criminal Law, 105.

NOMINATIONS

See Constitutional Law, 14, 17; Elections, 9.

NOMINATIONS AND PRIMARY ELECTIONS

See Elections, 6.

NONJUDICIAL DAYS

See Time, 1.

NONRESIDENT DEFENDANT

See Insane Persons, 2; Justices of the Peace, 4; Limitation of Actions, 8.

NONSUIT

See Appeal and Error, 107; Dismissal and Nonsuit, 1, 3; Judgment, 25; Trial, 10, 12.

NOTARY PUBLIC

See Process, 8.

NOTARY'S CERTIFICATE

See Acknowledgment, 1.

NOTES

See Bills and Notes, 4, 5; Counties, 10.

"NOT GUILTY"

See Criminal Law, 20.

NOTICE

See Banks and Banking, 2, 6, 7; Liens, 1; Mechanics' Liens, 5, 11, 12; Motions, 2; Taxation, 8.

NOTICE DISCLAIMING LIABILITY

See Appeal and Error, 110.

NOTICE OF ADVERSE POSSESSION

See Limitation of Actions, 7.

NOTICE OF APPEAL

See Appeal and Error, 34, 52, 93; Criminal Law, 18.

NOTICE OF ASSIGNMENT OF LEASE

See Landlord and Tenant, 1.

NOTICE OF CHANGE OF RATES

See Carriers, 1.

NOTICE OF MOTION FOR NEW TRIAL

See New Trial, 5.

NOTICE OF OWNERSHIP

See Carriers, 3.

NOTICE OF POSSESSION

See Waters and Watercourses, 14.

NOTICE OF TITLE TO PROPERTY

See Carriers, 12.

NOTICE REPUDIATING LIABILITY

See Mechanics' Liens, 4.

NOTICES

See Mines and Minerals, 27.

NOTICE TO LESSEE

See Landlord and Tenant, 1.

NOTICE TO THIRD PARTIES

See Homestead, 2.

NOVATION

1. Substitution of new debtor.

1. Substitution of new debtor.

Where, before divorce, a husband signed a note to obtain funds to protect his interest in a mining venture, and after divorce, though no payments were made on the note for a number of years, it was surrendered and a new note received by the bank, the second note cannot be regarded as a renewal of the first as against the divorced wife's interest in the community estate, for at the time of execution of the second note the husband could not bind the community, as it no longer existed, and the wife did not consent to be bound by such obligation. *Johnson v. Garner*, 233 F. 760.

NUISANCE

See Intoxicating Liquors, 6.

NULLITY OF DECREE

See Divorce, 15.

NUNC PRO TUNC

See Judgment, 16.

OBJECTION

See Indictment and Information, 9.

OBJECTION BY PARTY TAKING

See Depositions, 3, 4.

OBJECTION OR EXCEPTION

See Appeal and Error, 19.

OBJECTIONS TO COST BILL

See Certiorari, 3, 4; Costs, 17.

OBJECTIONS TO EVIDENCE

See Criminal Law, 92.

OBJECTIONS TO QUESTIONS TO WITNESS

See Criminal Law, 61.

OBLITERATING CATTLE BRANDS

See Animals, 1.

OBTAINING INJUNCTION

See Dismissal and Nonsuit, 1.

OCCUPANCY

See Homestead, 2.

OCCUPATION OF PREMISES

See Landlord and Tenant, 7.

OFFENSE

See Extradition, 1.

OFFENSES

See Libel and Slander, 11, 12, 13.

OFFER

See Eminent Domain, 17; Rewards, 1.

OFFER AND ACCEPTANCE

See Sales, 1.

OFFERS OF CLEMENCY

See Witnesses, 11.

OFFICE

See States, 1.

OFFICERS**I. APPOINTMENT, QUALIFICATION, AND TENURE.****(A) Officers, and Power to Appoint to and Remove from Office.**

1. Nature of public office.
2. Abolition of office.

(C) Eligibility and Qualification.

3. Holding other office or employment.

(G) Resignation, Suspension, or Removal.

4. Special judicial proceedings for removal.

III. RIGHTS, POWERS, DUTIES, AND LIABILITIES.

5. Compensation and fees—Right.

6. Compensation and fees—Form and amount of compensation.

I. APPOINTMENT, QUALIFICATION, AND TENURE**(A) OFFICES, AND POWER TO APPOINT TO AND REMOVE FROM OFFICE**

1. Nature of public office.

At common law a citizen could be required to perform the duties of an office. *State v. Hamilton*, 33 Nev. 418; 111 P. 1026.

2. Abolition of office.

The legislature, in the absence of special authorization in the constitution, may not abolish a constitutional office, or change, alter, or modify its constitutional powers and functions. *State v. Douglass*, 33 Nev. 82; 110 P. 177.

(C) ELIGIBILITY AND QUALIFICATION**3. Holding other office or employment.**

The position of townsite trustee is not an office within the provision of the constitution prohibiting a judge from accepting any office other than a judicial office during the term for which he is elected. *Jennett v. Stevens*, 34 Nev. 128; 116 P. 601.

(G) RESIGNATION, SUSPENSION, OR REMOVAL**4. Special judicial proceedings for removal.**

A proceeding for removal of a county officer need not be brought in the name of the state, under Stats. 1908-09, c. 200, secs. 21, 22 (Rev. Laws, 2851, 2852), giving procedure for removal of officers. *Gay v. District Court*, 41 Nev. 330; 171 P. 156.

III. RIGHTS, POWERS, DUTIES, AND LIABILITIES**5. Compensation and fees—Right.**

Words in a statute simply specifying that an officer shall receive a designated compensation have no retroactive effect, unless there is something in the language indicating it. *State ex rel. Fowler v. Eggers*, 33 Nev. 535; 112 P. 699.

6. Compensation and fees—Form and amount of compensation.

Under the provisions of an act of the legislature fixing the salary of the justices of the peace of certain townships at "not to exceed \$1,800 per year," the salary is not fixed at such maximum sum, and the justice is not entitled to such maximum salary unless the same is fixed by some board or power authorized by law. *Heywood v. Nye County*, 36 Nev. 568; 137 P. 515.

See Corporations, 5; Evidence, 5; Grand Jury, 7; Pleading, 4; Railroads, 1, 5, 12.

OFFSETS TO CLAIMS AGAINST ESTATES

See Executors and Administrators, 9, 10.

OMISSION IN AMENDING ACT

See Municipal Corporations, 5.

OPEN ACCOUNT

See Interest, 1.

OPENING AND CLOSING

See Trial, 2.

OPENING DEFAULT

See Judgment, 9.

OPERATION OF LAW

See Landlord and Tenant, 5.

OPINION

See Evidence, 18, 21.

**OPINION BASED ON RUMORS
AND CURRENT PUBLI-
CATIONS**

See Grand Jury, 4.

OPINION EVIDENCE

See Appeal and Error, 21; Criminal Law, 39; Evidence, 21.

OPINION ON REHEARING

See Costs, 16.

**OPPORTUNITY TO AMEND COM-
PLAINT**

See Appeal and Error, 22, 113.

OPPORTUNITY TO PERFORM

See Joint Ventures, 2.

OPPOSITE DIRECTIONS

See Mines and Minerals, 13.

OPTION CONTRACT

See Vendor and Purchaser, 1.

ORDER DENYING NEW TRIAL

See Appeal and Error, 29.

**ORDER FOR PUBLICATION OF
SUMMONS**

See Divorce, 7.

"ORDER MADE AND ENTERED"

See Appeal and Error, 29.

**ORDER OF DETERMINATION OF
STATE ENGINEER**

See Constitutional Law, 26, 45.

ORDER OF PUBLICATION

See Process, 5.

ORDER TO SHOW CAUSE

See Divorce, 25.

ORDERS

See Appeal and Error, 5, 43.

ORDERS APPEALABLE

See Appeal and Error, 8.

ORDERS REVIEWABLE

See Appeal and Error, 6, 84.

ORDINANCE NOT IN EFFECT

See Prohibition, 1.

ORDINANCES

See Municipal Corporations, 3, 4.

ORE SHIPMENTS

See Carriers, 2.

ORIGINAL COMPLAINT

See Appeal and Error, 94.

ORIGINAL LESSEE

See Landlord and Tenant, 7.

ORIGINAL PROCEEDINGS

See Certiorari, 2.

ORPHANS' HOME

See Charities, 3; Infants, 1.

**"OTHER HEAD" OF CORPORA-
TION**

See Corporations, 15.

OVERASSESSMENT

See Taxation, 10.

OVERFLOW

See Evidence, 18, 21, 25; Waters and Water-courses, 17, 19.

"OVERLOAD"

See Libel and Slander, 2.

OWNERS' AGENT

See Mechanics' Liens, 4.

OWNERSHIP

See Eminent Domain, 3, 7; Husband and Wife, 3; Property, 1; Trover and Conversion, 2.

OWNERSHIP OF PROPERTY

See Replevin, 1.

PALM PRINTS

See Criminal Law, 40.

PARDON

1. Nature and grounds of power.

1. Nature and grounds of power.

The right to apply to the board of pardons and its power to act exist independent of statute. Ex Parte Melosevich, 38 Nev. 67; 133 P. 57.

PARDONS, BOARD OF

See Pardon, 1.

PARENT AND CHILD

See Habeas Corpus, 10, 14.

PARI MATERIA

See Statutes, 34.

PAROL EVIDENCE

See Evidence, 14, 16, 17; Vendor and Purchaser, 1.

PAROL LICENSE WITHOUT CONSIDERATION

See Licenses, 6.

PARTIAL INVALIDITY

See Statutes, 3.

PARTICULAR FORM OF WORDS FOR APPROPRIATION

See States, 6.

PARTICULAR WORDS

See Libel and Slander, 2.

PARTICULARITY

See Executors and Administrators, 10.

PART PAYMENT

See Limitation of Actions, 11.

PARTIES**I. PLAINTIFFS.**

(A) *Persons Who May or Must Sue.*

1. Real party in interest.

III. NEW PARTIES AND CHANGE OF PARTIES.

2. Intervention—Application and proceedings thereon.

IV. DESIGNATION AND DESCRIPTION.

3. Parties in particular capacity.

I. PLAINTIFFS

(A) **PERSONS WHO MAY OR MUST SUE**

1. **Real party in interest.**

The purpose of practice act, sec. 44 (Rev. Laws, 4986), providing that every action shall be prosecuted in the name of the real party in interest, is, in view of sections 45, 56, 57, and 59, to relax the strict rules of the common law, so as to enable those directly interested in the subject-matter of the litigation to maintain the action. *Winemucca S. B. & T. Co. v. Corbell*, 42 Nev. 378; 178 P. 23.

III. NEW PARTIES AND CHANGE OF PARTIES

2. **Intervention—Application and proceedings thereon.**

A petition in intervention must be treated the same as a complaint. *Clark Co. v. Francovich*, 42 Nev. 321; 176 P. 259.

IV. DESIGNATION AND DESCRIPTION

3. **Parties in particular capacity.**

The indorsement and delivery of a note, whether negotiable or non-negotiable, as collateral for the payment of a debt, enables the pledgee, upon default of pledgor, to maintain an action thereon in its own name, the pledgee, if not the real party in interest within practice act, sec. 44 (Rev. Laws, 4986), being at least a trustee of an express trust, within section 45. *Winemucca S. B. & T. Co. v. Corbell*, 42 Nev. 378; 178 P. 23.

PARTIES PLAINTIFF

See Forcible Entry and Detainer, 1.

PARTIES TO ACTIONS

See Attachment, 9; Mandamus, 17; Prohibition, 9; Receivers, 4.

PARTIES TO OFFENSES

See Criminal Law, 3, 4.

PARTNERSHIP**I. THE RELATION.**

(A) *Creation and Requisites.*

1. Community of interest in profits and losses—Sharing profits as compensation for services.

(C) *Evidence.*

2. *Admissibility—As between partners.*

3. *Weight and sufficiency—As between partners.*

IV. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.

(D) *Actions by or Against Firms or Partners.*

4. Judgment.

I. THE RELATION

(A) **CREATION AND REQUISITES**

1. **Community of interest in profits and losses—Sharing profits as compensation for services.**

A contract provided that plaintiff was to work for defendant in the business of flour manufacturing, and was to receive a salary of \$125 per month, and, in addition thereto, one-half of the profits over \$3,000. Held, that though the compensation was measured in part by the profits, the contract did not create the partnership relation, but one of employment. *Goodin v. Pitt*, 36 Nev. 156; 134 P. 459.

(C) EVIDENCE

2. **Admissibility—As between partners.**

In case of doubt as to the existence of a

partnership in a suit for an accounting, the court may look to the conduct of the parties at the time of and subsequent to the date of the contract to ascertain what they understood and agreed on. *Wright v. Amana*, 192 F. 649.

3. Weight and sufficiency—As between partners.

Evidence held to require a finding that a contemplated partnership between plaintiff and defendant was never actually launched, but that the defendant proceeded to conduct the enterprise in his own name and for his exclusive benefit, and hence plaintiff could not maintain a suit for an accounting, but only an action at law for breach of the agreement to form a partnership. *Id.*

IV. RIGHTS AND LIABILITIES AS TO THIRD PERSONS

(D) ACTIONS BY OR AGAINST FIRMS OR PARTNERS

4. Judgment.

Under Rev. Laws, 5239, providing that judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and sec. 5240, providing that, in an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper, in an action against partners, the court did not exceed its jurisdiction by rendering judgment against one of them. *Conway v. District Court*, 40 Nev. 395; 164 P. 1009.

PARTY AFFILIATIONS

See Elections, 3.

PARTY CONVENTION

See Elections, 9.

PARTY IN INTEREST

See Pledges, 2.

PARTY OFFICES

See Elections, 9.

PASSENGERS

See Actions, 2; Carriers, 1; Evidence, 6.

PASSING OF TITLE

See Sales, 1, 9.

PATENTED MINING CLAIMS

See Constitutional Law, 10; Courts, 9; Taxation, 7, 19.

PATENTS

See Fraud, 1; Mines and Minerals, 18; Public Lands, 5, 6, 9, 10.

PAYMENT

I. REQUISITES AND SUFFICIENCY.

1. Payment by checks.
2. Payment by checks—Of debtor.

III. OPERATION AND EFFECT.

3. Admission of liability.

IV. PLEADING, EVIDENCE, TRIAL, AND REVIEW.

4. Presumptions and burden of proof.

V. RECOVERY OF PAYMENTS.

5. Mistake of fact.

I. REQUISITES AND SUFFICIENCY

1. Payment by checks.

A debt cannot be discharged with an unpaid check, except upon a clear showing that the creditor at the time accepted such check absolutely and unconditionally. *Jensen v. Wilslef*, 36 Nev. 37; 132 P. 16; *Ann. Cas.* 1914D, 1220.

2. Payment by checks—Of debtor.

An offer by a debtor to send a draft on a bank which had suspended payment in payment of his debt to the creditor was met with a draft drawn by the creditor on the debtor for the cash, and the draft was returned unpaid. Later, the creditor placed the claim in the hands of an agent for collection, without authority to receive checks. The debtor sent checks drawn on the bank to the agent. The creditor received the checks and credited the debtor with the amount thereof, subject to collection, and the checks were forwarded for collection, but returned unpaid, and immediately charged back to the debtor's account. Held, not to show payment by the debtor. *Roberts Shoe Co. v. McKim*, 34 Nev. 191; 117 P. 13.

III. OPERATION AND EFFECT

3. Admission of liability.

Plaintiff performed services in attempting to procure a purchaser for corporate stock for which he claimed he was entitled to \$3,000 from defendants. In an interview with defendants one of them said he was entitled to something, and they offered him \$500, which he refused. He offered to settle for \$1,500, but defendants offered him \$750, stating that they would pay him more later, and he accordingly accepted the \$750. Held, that there was no recognition by defendants of any legal liability to plaintiff by virtue of the former contractual relations, and the payment of \$750 did not change their moral obligation to plaintiff into a legal debt. *Christensen v. Duborg*, 33 Nev. 404; 150 P. 306.

IV. PLEADING, EVIDENCE, TRIAL, AND REVIEW

4. Presumptions and burden of proof.

A debtor who seeks to establish a settlement of the account other than by a payment in cash has the burden of showing that fact. *Roberts Shoe Co. v. McKim*, 34 Nev. 191; 117 P. 13.

The mere fact that defendant got \$600 from deceased raises the presumption of law that he received it in payment of a debt. *Horgan v. Indart*, 41 Nev. 228; 168 P. 953.

V. RECOVERY OF PAYMENTS

5. Mistake of fact.

Where money is deposited with a county clerk under the mistaken belief that it belongs to the estate of a decedent, upon whose estate no application for administration has been made, such money remains subject to the control of the person making deposit, and may be withdrawn by him. *State v. Langan*, 36 Nev. 578; 137 P. 517.

PAYMENT OF JUDGMENT

See Eminent Domain, 15; Mandamus, 15.

PAYMENT OF RENTALS

See Landlord and Tenant, 7.

PAYMENT OF RENTALS BY THIRD PARTIES

See Landlord and Tenant, 7.

PEACEABLE ADVERSE ENTRY

See Mines and Minerals, 1.

PENALTIES

I. NATURE AND GROUNDS AND EXTENT OF LIABILITY.

1. Nature and scope of punishment.

I. NATURE AND GROUNDS AND EXTENT OF LIABILITY

1. Nature and scope of punishment.

Penalties and forfeitures are not favored, unless plainly expressed. *State v. Harmon*, 35 Nev. 189; 127 P. 221; Ann. Cas. 1914C, 891.

See Forfeitures, 1.

PENALTIES AND FORFEITURES

See Statutes, 42.

PENALTY FOR REFUSAL TO ANSWER QUESTIONS

See Depositions, 2.

PERCENTAGE OF MINERAL IN ORE

See Evidence, 2.

PERCOLATING WATERS

See Waters and Watercourses, 25.

PERFORMANCE

See Contracts, 2; Sales, 7, 14.

PERFORMANCE OF CONDITION

See Charities, 3.

PERJURY

See Banks and Banking, 5.

"PERMANENT MONUMENT"

See Boundaries, 1.

PERPETUITIES

1. Remoteness of gifts to charities.

1. Remoteness of gifts to charities.

A bequest of the income of the residue of an estate to a fraternal order if the order established an orphans' home as provided therein, did not violate the common-law rule against perpetuities, such home being a public charity, since its use was not confined to any privileged or special class of orphans. *In Re Hartung*, 40 Nev. 263; 160 P. 782; 161 P. 715.

PERSONAL ACTION

See Vendor and Purchaser, 6.

PERSONAL AND PROPERTY RIGHTS

See Constitutional Law, 27.

PERSONAL INJURIES

See Damages, 2, 7, 10; Evidence, 7, 9, 10; Master and Servant, 35; Release, 1; Trial, 4, 22; Witnesses, 8.

PERSONAL JUDGMENT

See Mechanics' Liens, 14.

PERSONAL PROPERTY

See Attachment, 1, 4; Bankruptcy, 7; Taxation, 3.

PERSONAL PROPERTY WITHIN STATE

See Limitation of Actions, 8.

PERSONAL REPRESENTATIVE

See Limitation of Actions, 13.

PERSONAL SERVICE

See Judgment, 1, 33.

PERSONS BOUND

See Judgment, 27.

PERSONS ENGAGED IN "MILITARY SERVICE"

See Elections, 1.

PERSUASION OR INDUCEMENT

See Criminal Law, 4.

PETITION FOR REHEARING

See Appeal and Error, 77.

**PETITION FOR REMOVAL OF
COMMISSIONER**

See Counties, 3.

PETITION IN INTERVENTION

See Parties, 2.

**PHOTOGRAPHS OF PALM PRINTS
AS EVIDENCE**

See Criminal Law, 37.

PHYSICAL FACTS

See Appeal and Error, 105; Evidence, 23, 25.

PIOUS USES

See Religious Societies, 1.

PLACE OF WORK

See Master and Servant, 11.

PLEA

See Criminal Law, 102; Indictment and Information, 9.

PLEADING

I. FORM AND ALLEGATIONS.

1. Nature and mode of pleading.
2. Matters of fact or conclusions.
3. Consistency or repugnancy.
4. Construction.

II. DECLARATION, COMPLAINT, PETITION OR STATEMENT.

5. Statement of cause of action.
6. Admissions.

III. PLEA OR ANSWER, CROSS-COMPLAINT, AND AFFIDAVITS OR DEFENSE.

(A) Defenses.

7. Nature and scope of defense.
8. Necessity for defense.
9. Mode of pleading defenses.
10. Pleading different pleas or defenses together.

(D) Matters in Avoidance.

11. Statement of new matter constituting defense under codes and procedure.
12. Matters available under general issue or general denial.

IV. REPLICATION OR REPLY AND SUBSEQUENT PLEADINGS.

13. Admissions.

V. DEMURRER OR EXCEPTION.

14. Grounds for demurrer.
15. Grounds for demurrer to complaint.
16. Demurrer to part of pleading or to pleading good in part.
17. Admissions by demurrer.

VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.

18. Leave of court to amend—Amendment to conform to proofs.
19. Amendment of complaint—New or different cause of action.
20. Amendment of plea or answer—Condition of cause and time for amendment.

X. FILING, SERVICE AND WITHDRAWAL.

21. Requisites and sufficiency of filing.
22. Sufficiency of service and proof thereof.

XI. MOTIONS.

23. Election between causes of action, counts or defenses.
24. Matters to be proved—Admissions.

XIII. DEFECTS AND OBJECTIONS, WAIVER, AND AIDER BY VERDICT OR JUDGMENT.

25. Cure by subsequent pleading—Pleading of adverse party.
26. Objections to rulings on demurrer—Waiver by pleading over.

I. FORM AND ALLEGATIONS

1. Nature and mode of pleading.

The only source of authority for any pleading and the rules for the construction thereof are drawn from the practice act. *Walser v. Moran*, 42 Nev. 111; 173 P. 1149; 180 P. 492.

2. Matters of fact or conclusions.

An allegation in the complaint, in an action to enjoin the state engineer and a district water commissioner from preventing the water appropriated by plaintiffs from flowing into their irrigation ditch, that defendants had, without authority of law therefor and without right, closed the headgate of plaintiff's ditch was not objectionable as a mere conclusion of law, where another section of the complaint set forth plaintiffs' appropriation of the water prior to the passage of the first comprehensive water act, and alleged the consummation of its diversion and application to a beneficial use on or before the year 1890, and that prior thereto no other person had acquired any right to the water thus appropriated. *Knox v. Kearney*, 37 Nev. 393; 142 P. 526.

An allegation "that the said plaintiff has no right, claim, or title to the said painting or picture, and is not entitled to the ownership or possession of the same," is a conclusion of law. *Clark Co. v. Francovich*, 42 Nev. 321; 176 P. 259.

In a suit for specific performance of an employment contract for services rendered, an allegation in the bill that defendant corporation ratified the acts of D., who employed plaintiff, and ratified the contract of employment between plaintiff and D., was a mere conclusion of law, and insufficient to show that the corporation was bound by the contract, under the rule that, if the corporation ratified the contract of the promoter, the facts constituting such ratification must be pleaded. *Eckley v. Daniel*, 193 F. 279.

3. Consistency or repugnancy.

Plaintiff in equity action will not be permitted to rescind a contract for fraud, and, failing in this, to recover damages for breach, and relief for violation of fiduciary obligation created by the contract; such relief being inconsistent. *Walser v. Moran*, 42 Nev. 112; 173 P. 1149; 180 P. 492.

The rule that inconsistent causes of action cannot be pleaded is based upon the theory that one or the other must be false, and that pleader ought to know which is true and which is false, and should be compelled to choose between them. *Nelson v. Smith*, 42 Nev. 302; 176 P. 261; 178 P. 625.

4. Construction.

In an action to enjoin the state engineer from shutting off water from an irrigation ditch, the presumption that since the engineer is a public official his acts were legal is not available in support of a demurrer to the complaint. *Knox v. Kearney*, 37 Nev. 393; 142 P. 526.

Where it did not appear from the complaint, in an action to enjoin the state engineer and a district water commissioner from shutting off the water from plaintiffs' irrigation ditch, that there were other users of the water constituting the source of supply, or others having a right to use all or part of the water which plaintiffs claimed to have appropriated, the existence of other appropriators could not be presumed in support of a demurrer to the complaint. *Id.*

II. DECLARATION, COMPLAINT, PETITION OR STATEMENT**5. Statement of cause of action.**

Plaintiff is required to state in his complaint facts which constitute his cause of action and nothing more. *Walser v. Moran*, 42 Nev. 112; 173 P. 1149; 180 P. 492.

However strong grievances or wrongs may appeal to the conscience of the chancellor for correction and relief, averments and allegations thereof, however varied they may be, make a sufficient complaint only when squaring with the rules of the civil practice act. *Id.*

6. Admissions.

Allegation of plaintiff, a divorced wife, suing executors of a deceased husband's will to alter judgment to make alimony awarded llen on husband's estate, that no provision was made and no specific property of husband set aside by original decree to secure monthly alimony payments, was admission on part of wife that judgment rendered in connection with decree, standing alone, could not be construed as charge on husband's estate. *Sweeney v. Sweeney*, 42 Nev. 431; 179 P. 638.

III. PLEA OR ANSWER, CROSS-COMPLAINT, AND AFFIDAVITS OR DEFENSE**(A) DEFENSES****7. Nature and scope of defense.**

It is not the office of an answer to raise

an issue of law, where such issue should be determined on demurrer. *Dixon v. Pruett*, 42 Nev. 346; 177 P. 11.

8. Necessity for defense.

If the illegality of a contract sued on appears on the face of the complaint counting on it, its illegality is left a live question, to be dealt with by the trial court without a formal plea showing its illegality. *Id.*

9. Mode of pleading defenses.

Under civil practice act, sec. 39 (Comp. Laws, 3133), providing that the only pleadings on the part of the defendant shall be a demurrer or an answer, and section 44 (section 3139), providing that when any of the matters enumerated in section 40 (section 3135) as grounds of demurrer do not appear on the face of the complaint, the objection may be taken by answer, matters in abatement or bar can only be set up in the answer. *McKim v. District Court*, 33 Nev. 44; 110 P. 4.

10. Pleading different pleas or defenses together.

A party may plead inconsistent defenses provided they are not so incompatible as to render either one or the other false. *Nelson v. Smith*, 42 Nev. 303; 176 P. 261; 178 P. 625.

(D) MATTERS IN AVOIDANCE**11. Statement of new matter constituting defense under codes and procedure.**

Under practice act, sec. 104, a defendant claiming affirmative relief must plead as fully as plaintiff. *Dixon v. Pruett*, 42 Nev. 345; 177 P. 11.

Under practice act, sec. 104, "new matter" constituting a defense means some facts which plaintiff is not bound to prove, and which go in avoidance or discharge. *Id.*

Under practice act, sec. 104, the sufficiency of a defense is tested by whether the new matter constitutes a defense, taking the complaint as true. *Id.*

12. Matters available under general issue or general denial.

In action against administrator to charge certain assets of estate with a claim for legal services rendered deceased, affirmative defenses pleaded by defendant held demurrable, in that they amounted to nothing more than special denials of facts incumbent upon plaintiff to prove. *Id.*

IV. REPLICATION OR REPLY AND SUBSEQUENT PLEADINGS**13. Admissions.**

Under Stats. 1915, c. 158, providing that each material allegation of new matter in the answer, uncontroverted by the reply, must be taken as true, an allegation of the answer, undenied by the replication, must be taken as true. *Bernard v. Metropolis L. Co.*, 40 Nev. 89; 160 P. 811.

V. DEMURRER OR EXCEPTION**14. Grounds for demurrer.**

That a pleading may contain inferences of law does not render it demurrable, where

It alleges facts sufficient to show a cause of action. *Knox v. Kearney*, 37 Nev. 394; 142 P. 526.

15. Grounds for demurrer to complaint.

On demurrer to complaint, on ground that it shows that plaintiff was guilty of laches, it must appear from averments in complaint that plaintiff was guilty of laches. *Miller v. Walser*, 42 Nev. 500; 181 P. 437.

Defense of laches may be raised by demurrer, where it appears on the face of the complaint. *Dixon v. Pruett*, 42 Nev. 346; 177 P. 11.

16. Demurrer to part of pleading or to pleading good in part.

A demurrer may be made to a whole pleading, or to the statement of any of the grounds embodied therein. *Bernard v. Metropolis L. Co.*, 40 Nev. 89; 160 P. 811.

Where a demurrer is filed to the whole pleading, it may be overruled if any of the statements are held to be good in furtherance of the purpose of the pleading, whether establishing a cause of action or interposing a defense; the rule applying not only as to a complaint, but equally to the answer and its affirmative allegations. *Id.*

A demurrer directed to an entire plea or entire answer, which plea or answer contains several separable parts, must be overruled if any of the parts is in itself good. *Id.*

17. Admissions by demurrer.

In determining points of law raised by a demurrer, facts pleaded in a complaint are considered as true. *Knox v. Kearney*, 37 Nev. 393; 142 P. 526.

On demurrer to the complaint, allegations in the complaint are to be taken as true. *Miller v. Walser*, 42 Nev. 499; 181 P. 437.

A demurrer to a complaint for misjoinder of causes of action concedes that the complaint states two or more good causes of action. *Walser v. Moran*, 42 Nev. 112; 173 P. 1149; 180 P. 492.

VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER

18. Leave of court to amend—Amendment to conform to proofs.

Plaintiff, in an action to compel the surrender of shares of stock, was properly permitted, after decision, but before judgment, to amend and supplement his complaint by setting forth undisputed facts shown on the trial to have existed at the time thereof. *Elgan v. Keane Wonder M. Co.*, 34 Nev. 469; 125 P. 693.

Where, in an action to compel the surrender of shares of stock, a motion of the defendant for a nonsuit and consent thereto by the plaintiff were withdrawn by stipulation, and defendant given leave to amend its answer to show facts in evidence occurring subsequent to the institution of the suit, defendant could not object to the amendment of the plaintiff's complaint, after de-

cision and before judgment, to conform to such facts. *Id.*

Under Rev. Laws, 5081, providing that where the variance is not material a finding according to the evidence or an immediate amendment may be ordered, amendment of prayer of the complaint may be allowed at conclusion of plaintiff's case. *Miller v. Thompson*, 40 Nev. 35; 160 P. 775.

19. Amendment of complaint—New or different cause of action.

In an action for wrongful death from decedent coming in contact with the lining of a mine entry that had become charged with electricity through the negligent maintenance of defendant's wire outside the entry, the court permitted plaintiff to amend so as to allege that for more than four years prior to decedent's death plaintiff, his father, had emancipated him and surrendered to him all rights to his earnings, and that for more than a year decedent had contributed large sums of money to the support of his brothers and sister, and had he lived he would have continued such contributions. Held, that such amendments were not objectionable as setting forth a new and different cause of action. *Truckee R. G. E. Co. v. Benner*, 211 F. 79; 127 C. C. A. 503.

20. Amendment of plea or answer—Condition of cause and time for amendment.

Where a railroad company, when sued for a breach of contract for a special interstate train, filed a demurrer which was overruled, and a motion to strike out parts of the complaint, which was denied, and then filed an answer, refusal to permit amendment of the answer during the trial many months after the filing of the complaint, by setting up a failure to comply with the interstate commerce act in the establishment of rates for special trains, and to plead the invalidity of the contract by reason thereof, was proper. *Burrus v. N. C. O. Ry.*, 38 Nev. 156; 145 P. 926; *L. R. A.* 1917D, 750.

X. FILING, SERVICE AND WITHDRAWAL

21. Requisites and sufficiency of filing.

Where plaintiff in a suit in support of an adverse claim to a mining location lodged his complaint in the hands of the clerk, paid the fees, and directed that it be filed, it was filed in contemplation of law, though the clerk at that time failed to put file marks on it; such marks being mere evidence of the fact of filing. *Emmons v. Marbelite Plaster Co.*, 193 F. 181.

22. Sufficiency of service and proof thereof.

Since an original complaint could not be impeached because of the absence of file marks thereon, defendant was not prejudiced because the copy of the complaint served did not contain the file marks appearing on the original. *Emmons v. Marbelite Plaster Co.*, 193 F. 182.

XI. MOTIONS**23. Election between causes of action, counts or defenses.**

Where there was no inconsistency in the evidence offered in support of validity of two locations pleaded by plaintiffs, the court properly refused to compel them to elect. *Nelson v. Smith*, 42 Nev. 303; 176 P. 261; 178 P. 625.

24. Matters to be proved—Admissions.

Where defendant's answer admitted a fact, proof of that fact was wholly unnecessary. *Frances-Mohawk v. McKay*, 37 Nev. 191; 141 P. 456.

Where, in an action to recover real property, the answer alleging title by adverse possession was verified and alleged payment of taxes by defendant, and such allegation was not denied by the replication, no evidence on this point was necessary. *Boyd-stun v. Jacobs*, 38 Nev. 176; 147 P. 447.

XIII. DEFECTS AND OBJECTIONS, WAIVER, AND AID BY VERDICT OR JUDGMENT**25. Cure by subsequent pleading—Pleading of adverse party.**

Though a complaint in an action to foreclose a materialman's lien did not properly describe the premises on which the lien was claimed, where the answer set up the true description which was agreed to by stipulation of the parties, it will be considered in aid of the complaint so as to support a judgment entered. *Riverside Fixture Co. v. Quigley*, 35 Nev. 17; 126 P. 545.

26. Objections to rulings on demurrer—Waiver by pleading over.

A defendant by filing an answer to a complaint within the time allowed by order of court waived all the grounds of the demurrer, except that it did not state facts sufficient to constitute a cause of action. *Jones v. West End Con. M. Co.*, 36 Nev. 149; 134 P. 104.

See Appeal and Error, 64, 78, 84; Damages, 8; Trial, 1.

PLEADING AND PROOF

See Judgment, 35, 36.

PLEDGE

See Marshaling of Assets, 1.

PLEDGES

1. Title to property pledged.
2. Enforcement of right of action pledged and failure to collect or fix liability.

1. Title to property pledged.

In case of a note of a third party pledged as collateral security, the general property remains in the pledgor, and a special property in the note passes to the pledgee, and whatever special interest is necessary to enable pledgee to exercise the rights guar-

anteed to him or discharged the obligations imposed upon him by contract vests in him. *Winnemucca S. B. & T. Co. v. Corbell*, 42 Nev. 378; 178 P. 23.

Plaintiff, by taking from debtor payee defendant's note, expressly as collateral security, undertook to account to debtor, and became the holder of the legal title under an express trust to hold the beneficial interest or the money collected primarily for itself and secondarily for debtor. *Winnemucca S. B. & T. Co. v. Corbell*, 42 Nev. 379; 178 P. 23.

2. Enforcement of right of action pledged and failure to collect or fix liability.

The general rule is that the pledgor cannot maintain an action on the collateral while the condition is not performed, and the pledgee of a collateral, where the condition has not been performed, is held to be the party in interest to maintain an action thereon. *Winnemucca S. B. & T. Co. v. Corbell*, 42 Nev. 378; 178 P. 23.

PLENARY POWER OF LEGISLATURE

See Constitutional Law, 47; Counties, 5.

POISON

See Criminal Law, 114.

POLICE POWER

See Animals, 1; Banks and Banking, 2, 6, 7; Constitutional Law, 27; Criminal Law, 1; Waters and Watercourses, 1.

POLICY OR WISDOM OF THE LAW

See Constitutional Law, 24.

POSITIVE CONSTITUTIONAL INHIBITION

See Constitutional Law, 10.

POSITIVE KNOWLEDGE

See Indictment and Information, 9.

POSITIVE STATEMENTS OF EXPERTS

See Criminal Law, 41.

POSITIVE TESTIMONY

See Evidence, 23.

POSSESSION

See Forcible Entry and Detainer, 1, 4; Judgment, 27; Mines and Minerals, 20; Waters and Watercourses, 14.

POSSESSION OF ATTACHING OFFICER

See Attachment, 1, 4.

POSSESSION OF PREMISES

See Landlord and Tenant, 5, 7.

POSSESSION OF WEAPON

See Criminal Law, 28.

POSTING NOTICE

See Appeal and Error, 110.

POSTING NOTICE OF CHANGE OF RATES

See Carriers, 1.

POSTING OF NOTICES

See Mines and Minerals, 27.

POWER OF COURT

See Divorce, 22.

POWER OF LEGISLATURE

See Intoxicating Liquors, 4.

POWER OF LEGISLATURE TO DEFINE OFFENSES

See Criminal Law, 1.

POWER TO LICENSE

See Licenses, 1, 2.

POWERS

See Municipal Corporations, 6, 8.

POWERS OF GOVERNMENT

See Constitutional Law, 20.

POWERS OF MUNICIPAL CORPORATIONS

See Municipal Corporations, 1.

PRACTICE

See Trial, 30.

PRAYER

See Pleading, 18.

PRAYER UPON BOTH CONTRACT AND TORT NOT DEMURRABLE

See Action, 5.

PREFERRED CLAIMS

See Mechanics' Liens, 9.

PREJUDICE

See Criminal Law, 113; Equity, 3.

PREJUDICE FROM DELAY

See Equity, 3.

PREJUDICIAL ERROR

See Criminal Law, 109, 111.

PRELIMINARIES TO MOTION FOR NEW TRIAL

See New Trial, 5.

PRELIMINARY EVIDENCE

See Criminal Law, 35.

PRELIMINARY EXAMINATION

See Criminal Law, 16.

PRELIMINARY HEARING

See Criminal Law, 15.

PRELIMINARY PROOF OF CONFESSION

See Criminal Law, 45.

PREMIUM ON STAY BOND

See Costs, 14.

PRESCRIPTION

See Adverse Possession, 1, 5; Easements, 1, 2.

PRESERVATION OF EXCEPTIONS

See Criminal Law, 90.

PRESUMPTION AGAINST TRIAL COURT

See Appeal and Error, 92.

PRESUMPTION AS TO JURISDICTION

See Courts, 8.

PRESUMPTION IN FAVOR OF ACT

See Constitutional Law, 17.

PRESUMPTION OF AUTHORITY OF OFFICER

See Corporations, 5.

PRESUMPTION OF EXISTENCE OF LICENSE

See Waters and Watercourses, 18.

PRESUMPTION OF FRAUD

See Attorney and Client, 5.

PRESUMPTIONS

See Evidence, 5; Grand Jury, 7; Statutes, 3, 4, 6.

PRESUMPTIONS AND BURDEN OF PROOF

See Marriage, 3, 4.

PRESUMPTIONS AND INFERENCES

See Evidence, 26.

PRESUMPTIONS AS TO RECORD ON APPEAL

See Criminal Law, 101.

PRESUMPTIONS AS TO RULING ON DEMURRER

See Appeal and Error, 94.

PREVENTION OF PERFORMANCE OF CONTRACT

See Damages, 6, 8.

PRIMA FACIE EVIDENCE

See Homestead, 2.

PRIMARY ELECTIONS

See Constitutional Law, 14, 17; Elections, 3, 4, 5, 6, 7, 9, 13.

PRINCIPAL AND AGENT

I. THE RELATION.

(A) *Creation and Existence.*

1. Evidence of agency—Weight and sufficiency.
2. Questions for jury.

II. MUTUAL RIGHTS, DUTIES AND LIABILITIES.

(A) *Execution of Agency.*

3. Individual interest of agent.
4. Actions for accounting.

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.

(A) *Powers of Agent.*

5. Implied and apparent authority—Collection of debts due principal.
6. Evidence as to authority—Weight and sufficiency.

(B) *Undisclosed Agency.*

7. Liabilities of undisclosed principal.

(C) *Unauthorized and Wrongful Acts.*

8. Effect of exceeding authority.
9. Negligence or wrongful acts of agent.

(E) *Notice to Agent.*

10. Imputation to principal.

I. THE RELATION

(A) CREATION AND EXISTENCE

1. Evidence of agency—Weight and sufficiency.

Agency may be shown by circumstances and the course of dealing. *H. H. M. Safe Co. v. Balliet*, 38 Nev. 164; 145 P. 941.

2. Questions for jury.

The existence or nonexistence of an agency is a question of fact for the jury. *Id.*

II. MUTUAL RIGHTS, DUTIES AND LIABILITIES

(A) EXECUTION OF AGENCY

3. Individual interest of agent.

An undisclosed agreement between the superintendent of a mining company, who acted as its agent with respect to all workings within the ground of the company, and inspected the works of lessees, etc., and a lessee of the company, whereby the superintendent was to receive a percentage of the profits of the lessee, is in its very nature a fraud upon the mining company because it would tend to place the superintendent in a position antagonistic to his principal. *Frances-Mohawk v. McKay*, 37 Nev. 191; 141 P. 456.

Though, where an agent fully discloses the facts, his principal cannot require him to account for any sum which the agent may receive from a third person as consideration for an agreement with such third person which places him in a position antagonistic to his principal, yet, if the agent fails to disclose all of the facts pertaining to the transaction, the principal may recover any sum received by the agent. *Frances-Mohawk v. McKay*, 37 Nev. 192; 141 P. 456.

Where an agent enters into a contract with one who has dealings with his principal which gives him an interest antagonistic to his duty towards his principal, the principal may recover from the agent any sum so received. *Id.*

4. Actions for accounting.

In an action by a mining company to recover from its agent sums received from a lessee under an agreement which caused the agent to assume a position antagonistic to the company, evidence held sufficient to show that the mining company was not fully informed as to the agreement. *Id.*

An agent can be brought to account with his principal for moneys and property received in transaction arising out of agency relationship. *Walser v. Moran*, 42 Nev. 112; 173 P. 1149; 180 P. 492.

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS

(A) POWERS OF AGENT

5. Implied and apparent authority—Collection of debts due principal.

An agent intrusted with a claim for collection is, in the absence of express authority to that effect, without power to accept anything in payment but lawful money, and where he accepts checks in payment, the creditor is not bound thereby in the absence of a ratification. *Roberts Shoe Co. v. McKim*, 34 Nev. 191; 117 P. 13.

6. Evidence as to authority—Weight and sufficiency.

In an action for the purchase price of a

safe, evidence held sufficient to warrant the jury in finding that the salesman of the seller had authority to rescind the contract. *H. H. M. Safe Co. v. Balliet*, 38 Nev. 164; 145 P. 941.

(B) UNDISCLOSED AGENCY

7. *Liabilities of undisclosed principal.*

Where an undisclosed principal denied all liability for goods sold to his agent, without asserting that the seller should elect whether to hold the agent or the undisclosed principal, he waived his right to compel an election, and could not complain of a prior default judgment against the agent, rendered in the same action. *Nesbitt v. Cherry Creek I. Co.*, 38 Nev. 150; 145 P. 929.

Where a seller brought an action against the agent and the undisclosed principal, and obtained a default judgment against both, which was set aside as to the undisclosed principal, who denied all liability, the seller, prosecuting the action against the principal, elected to hold him responsible, and he could not complain of the judgment against the agent. *Id.*

A seller, who sued an agent and his undisclosed principal, without knowledge that the agent acted as agent, did not elect to hold the agent alone, and the principal could not escape liability. *Id.*

(C) UNAUTHORIZED AND WRONGFUL ACTS

8. *Effect of exceeding authority.*

A creditor placing his claim in the hands of an agent for collection is not bound by the acts or declarations of the agent except such as he authorized or subsequently ratified. *Roberts Shoe Co. v. McKim*, 34 Nev. 191; 117 P. 13.

9. *Negligence or wrongful acts of agent.*

A principal or master is liable for exemplary damages for the wrongful, wanton, and oppressive acts of his agents or servants when acting within the scope of his employment, although the particular acts were not authorized or ratified. *Forrester v. S. P. Co.*, 36 Nev. 248; 134 P. 753; 48 L. R. A. (N.S.) 1.

(E) NOTICE TO AGENT

10. *Imputation to principal.*

Under an agreement between plaintiff and defendant M., by which the latter was to relocate a mining claim, in their joint names, defendant M. relocated the claim but omitted plaintiff's name as a relocater and included the name of defendant S. Held, that ignorance of S. as to agreement will not affect right of plaintiff to enforce the agreement, as the location was made by M., and notice to an agent is notice to the principal. *Hornsilver Cases*, 35 Nev. 464; 130 P. 760, 764; 134 P. 448, 449.

See Criminal Law, 64, 111.

PRINTING EXPENSES ON APPEAL

See Costs, 17.

PRIOR APPROPRIATION

See Waters and Watercourses, 13.

PRIOR LIFE OF ACCUSED

See Criminal Law, 103.

PRIOR LOCATORS

See Mines and Minerals, 1, 10.

PRIORITY

See Mechanics' Liens, 9.

PRIVILEGES AND IMMUNITIES

See Intoxicating Liquors, 1.

PRIVITY

See Judgment, 27.

PROBATE

See Mandamus, 2.

PROCEDURE FOR REMOVAL OF COUNTY OFFICER

See Officers, 4.

PROCEEDINGS

See Eminent Domain, 11.

PROCEEDINGS FOR DISBARMENT

See Attorney and Client, 3.

PROCEEDINGS FOR REMOVAL OF COMMISSIONER

See Counties, 3, 5.

PROCEEDINGS TO MODIFY MONEY DIVORCE JUDGMENT

See Pleading, 6.

PROCEEDS OF CONVEYANCE

See Estoppel, 6, 8.

PROCESS

I. NATURE, ISSUANCE, REQUISITES AND VALIDITY.

1. Date.
2. Alias and pluries writs.

II. SERVICE.

(B) *Substituted Service.*

3. Mode and sufficiency of service—Service on attorney or agent.

(C) *Publication or Other Notice.*

4. Statutory provisions.
5. Application for order for publication—Affidavits.
6. Personal service out of jurisdiction in lieu of publication.

II. SERVICE—Contd.**(D) Privileges and Exemptions.**

7. Attendance at court—Parties.

(E) Return and Proof of Service.

8. Form and requisites of affidavit of service.

9. Evidence as to service—Presumptions and burden of proof.

I. NATURE, ISSUANCE, REQUISITES AND VALIDITY**1. Date.**

Comp. Laws Nev. 3118, provides that, at any time within a year after complaint filed, plaintiff may cause summons to be issued by the court. Sections 3119 and 3121 provide what the summons shall contain, but neither require it to be dated. Held that, since the defendant is required to appear within a specified time from the date of service and not from the date of summons, the summons was not fatally defective, though it contained an incorrect date or no date at all. *Emmons v. Marbelite Plaster Co.*, 193 F. 182.

2. Alias and pluries writs.

Stats. Nev. 1907, c. 169, provides that whenever any summons shall be returned not executed as to any defendant, or shall have been lost or destroyed, the plaintiff shall be entitled to another summons against such defendant if he shall require it until due service shall be made. Held that, where a complaint was filed February 26, 1908, the clerk, had power on March 2 following to issue a summons thereon, and, the first summons having been returned and destroyed unexecuted, plaintiff was entitled to the issuance of another, and the fact that the issuance of the alias summons was authorized by a prior order of the court neither added to nor subtracted from the clerk's authority conferred by statute. *Id.*

II. SERVICE**(B) SUBSTITUTED SERVICE****3. Mode and sufficiency of service—Service on attorney or agent.**

Service of process on an agent otherwise competent, whose relations to plaintiff or to the claim are such as to make it to his interest to suppress the fact of service, is insufficient. *King Tonopah M. Co. v. Lynch*, 232 F. 487.

(C) PUBLICATION OR OTHER NOTICE**4. Statutory provisions.**

There must be strict compliance with the statutes as to constructive service, which, under our practice, apply to both law and equity cases. *State v. Wildes*, 37 Nev. 56; 139 P. 505; 142 P. 627.

Statutes providing for service by publication, whether in court of record or justice court, being in derogation of common law, must be strictly construed and followed to give court jurisdiction over person. *Perry v. District Court*, 42 Nev. 284; 174 P. 1058.

While a state has no power over a non-

resident and absent owner, it has complete jurisdiction over his property within its borders, subject to the constitutional restriction that property cannot be taken from its owner except after due process of law, and hence may provide for constructive service by means of which judgment may be obtained and satisfied out of the property in the state belonging to an absent defendant. *King Tonopah M. Co. v. Lynch*, 232 F. 486.

5. Application for order for publication—Affidavits.

An affidavit for publication of a summons does not require the same detailed statement of a cause of action as is required in a complaint. Statements well-nigh being conclusions of law may, in some instances, suffice for the affidavit. *Veith v. Nevada Reduction Co.*, 36 Nev. 536; 137 P. 520.

The provisions of Rev. Laws. 5026, are in the alternative and it is sufficient either that the affidavit for publication of summons shows the existence of a cause of action or shows that the defendant is a necessary or proper party. *Id.*

An affidavit stating, "That said W. M. Stokes, trustee, is a necessary party defendant in this cause of action and that a cause of action exists against him, the said W. M. Stokes, trustee, by the plaintiff, and the cause of action is that plaintiff is a lien claimant and assignee of other lien claimants against the property of the Nevada Reduction Company, a corporation, and that the defendant, W. M. Stokes, trustee, claims to have some right, title or interest in said property and this suit is brought to have whatever interest, if any, the said Stokes may have in and to the property of the Nevada Reduction Company to be declared subject to the claims of plaintiff," states facts sufficient to show that said Stokes is a necessary or proper party to the action, and is sufficient to support an order for publication under the provisions of Rev. Laws, 5026. *Id.*

Under Rev. Laws, 5026, 5027 (Civ. Prac. Act, secs. 84, 85), relating to service by publication, it is jurisdictional that the affidavit for order of publication state either the residence of the defendant, whether person or corporation, or that the affiant does not know the residence. *Wildes v. Lou Dillon M. Co.*, 41 Nev. 364; 170 P. 1046.

6. Personal service out of jurisdiction in lieu of publication.

Civil practice act, sec. 31 (Comp. Laws, 3126), prior to the amendment of 1909, provided that, when service by publication is ordered personal service of a copy of the summons and complaint out of the state shall be equivalent to publication and deposit in the postoffice, and that the service of summons shall be deemed complete in cases of publication at the expiration of six weeks from the first publication, and that in cases when a deposit of a copy of

the summons and complaint in the post-office is also required, at the expiration of six weeks from such deposit. Held, that when personal service without the state is made in lieu of publication, or in lieu of publication and deposit in the postoffice, the service is not complete until the expiration of six weeks from such personal service, and, where such service was made November 10, defendant had forty-two days after the service in addition to the statutory period of forty days in which to answer, and a default entered December 21 and a decree thereon entered December 28 were premature, and plaintiff could have them set aside. *Sherwin v. Sherwin*, 33 Nev. 321; 111 P. 286; 122 P. 481; Ann. Cas. 1914A, 108.

Under section 31 of the civil practice act (Comp. Laws, 3126), providing, prior to the amendment of 1909 (Stats. 1909, c. 69), that when service by publication is ordered personal service of a copy of the summons and complaint out of the state shall be equivalent to publication and deposit in the postoffice, such a personal service is equivalent to a completed service by publication, as regards the time for answer. *Id.*

(D) PRIVILEGES AND EXEMPTIONS

7. Attendance at court—Parties.

Where a nonresident brought habeas corpus within the state against his wife for the possession of their minor child, he was not immune, while in the state for such purpose, from service of summons in a divorce suit; *Rev. Laws, 5445*, exonerating persons from arrest in a civil action while attending court as a witness, not protecting him from being served with a summons or applying to him while voluntarily in the state maintaining his own suit. *Tiedemann v. Tiedemann*, 35 Nev. 259; 129 P. 313.

(E) RETURN AND PROOF OF SERVICE

8. Form and requisites of affidavit of service.

Where personal service was had upon a nonresident, a certificate of the notary who administered the affidavit to the person making the service is prima facie proof of official character, and cannot be overturned in the absence of rebutting evidence. *Long v. Tighe*, 36 Nev. 129; 133 P. 60.

9. Evidence as to service—Presumptions and burden of proof.

The one by whom summons was served was, presumptively, a citizen of the United States over 21 years, and so authorized by section 31 of the civil practice act (Comp. Laws, 3123), to serve it; the return reciting that he was a constable and deputy sheriff of a county of California. *Sherwin v. Sherwin*, 33 Nev. 321; 111 P. 286; 122 P. 481; Ann. Cas. 1914A, 108.

See Corporations, 15; Judgment, 1, 33.

PROCESS AT TIME OF ADOPTION OF CONSTITUTION

See Constitutional Law, 40.

PRODUCTION OF CONFESSION OF ACCOMPLICE

See Criminal Law, 2.

PROHIBITION

I. NATURE AND GROUNDS.

1. Nature and scope of remedy.
2. Existence and adequacy of other remedies.
3. Discretion as to grant of writ.
4. Acts and proceedings of courts, judges and judicial officers.
5. Acts and proceedings of public officers and boards.
6. Grounds for relief.
7. Grounds for relief—Want or excess of jurisdiction.
8. Grounds for relief—Errors and irregularities.

II. JURISDICTION, PROCEEDINGS AND RELIEF.

9. Parties.

I. NATURE AND GROUNDS

1. Nature and scope of remedy.

Prohibition will not issue to restrain the enforcement of an ordinance not in effect, since there must be a cause pending before the writ will issue. *O'Brien v. Commrs.*, 41 Nev. 90; 167 P. 1007.

2. Existence and adequacy of other remedies.

Where a townsite trustee on the refusal of a lot claimant to pay excessive charges imposed, proceeds to sell the lot, there is no other adequate remedy affecting the right to the remedy by writ of prohibition; individual suits to settle the rights of the claimant not being an adequate remedy. *State v. Stevens*, 34 Nev. 146; 116 P. 605.

Where a district court had granted a temporary injunction against taxing officers of the county and state, and had overruled an attorney-general's demurrer to the complaint, the latter had an adequate remedy under *Rev. Laws, 5143*, authorizing a motion to set aside the temporary injunction, and *Rev. Laws, 5329*, giving an immediate appeal from an order refusing such motion so that he cannot maintain prohibition, even though the public interests are so great that he cannot rest on his demurrer and appeal from the judgment thereon, thereby losing his right to plead to the merits. *State v. District Court*, 38 Nev. 323; 149 P. 178.

Where an action was brought to recover possession of certain mining ground on an agreement containing a provision for plaintiff's taking possession of and working the mines, and the court had original jurisdiction to hear and determine the issues, if it erred in ordering judgment for plaintiff for possession, and for an accounting, or for damages for defendant's refusal to deliver possession under the agreement, its decision was reviewable by appeal only, and not on a writ of prohibition. *Silver Peak*

Mines v. District Court, 33 Nev. 97; 110 P. 503; 29 Ann. Cas. 587.

Where defendants, in an action to recover a mining claim, contended that a provision of the decree in favor of plaintiff and directing an accounting was not within the issues, whether the court had jurisdiction to decree such an accounting was reviewable by appeal, and not by a writ of prohibition. *Id.*

Prohibition is an extraordinary remedy which is available only in cases of extreme necessity to restrain a court from proceeding in a matter over which it has no jurisdiction, and where there appears no adequate remedy by appeal. *State v. District Court*, 38 Nev. 323; 149 P. 178.

A writ of prohibition cannot ordinarily be used to correct errors by inferior tribunals, and will not issue either in civil or criminal proceedings, where there is an adequate remedy by appeal or writ of certiorari. *Silver Peak Mines v. District Court*, 33 Nev. 97; 110 P. 503; 29 Ann. Cas. 587.

3. Discretion as to grant of writ.

The writ of prohibition is not a writ of right, but one of sound judicial discretion, to be issued or refused according to the facts of each particular case. *O'Brien v. Commissioners*, 41 Nev. 90; 167 P. 1007.

4. Acts and proceedings of courts, judges and judicial officers.

Under Comp. Laws, 346, providing that, if all the lots in a town site are not legally conveyed to the proper owners within one year after they have been passed upon by the district judge as townsite trustee, or in case of contest, within thirty days after the contest shall have been finally determined, they shall be sold to the highest bidders, prohibition is a proper remedy to prevent the sale of the lots where the failure to legally convey to the proper owners is due to the imposition of excessive charges by the townsite trustee as a condition precedent thereto. *State v. Stevens*, 34 Nev. 146; 116 P. 605.

When it is sought to prevent enforcement of void judgment upon which an execution is about to be levied, prohibition is the proper remedy, for an appeal from an order denying a motion to quash the summons and set aside the judgment does not afford sufficient relief; there being no provision for a stay pending the appeal. *Gordon v. District Court*, 36 Nev. 1; 131 P. 134; 44 L. R. A. (N.S.) 1078.

5. Acts and proceedings of public officers and boards.

Where a board of county commissioners has no legal power to act in the matter of an election recount, writ of prohibition, issuing on petition of presumably successful candidate, is a proper remedy. *McBride v. Griswold*, 38 Nev. 56; 146 P. 756.

Prohibition will not lie to restrain the county clerk from placing upon the official ballot the name of a nominee for justice of

the peace selected by the county central committee to fill the vacancy upon the death of the original nominee, because the chairman of the committee, who held three proxies, was disqualified under Stats. 1913, c. 282, sec. 18, being the holder of an appointive public office, for the chairman was at least a de facto officer, and his right to the office cannot be tested by prohibition against another officer. *State v. Harmon*, 38 Nev. 5; 143 P. 1183.

Rev. Laws, 5708, providing that the writ of prohibition arrests the proceedings of any tribunal, etc., whether exercising functions judicial or ministerial, when such proceedings are without or in excess of jurisdiction, does not enlarge the writ so as to reach proceedings not of a judicial character, and it will not issue to prohibit county commissioners and county sheriff from enforcing an ordinance requiring licenses for selling, etc., liquors in restaurants, etc. *O'Brien v. Commrs.*, 41 Nev. 90; 167 P. 1007.

6. Grounds for relief.

Under Rev. Laws, 5708, which provides that the writ of prohibition arrests the proceedings of any tribunal which are without or in excess of its jurisdiction, the writ will only issue where there is an exercise of functions without or in excess of the jurisdiction of the prohibited tribunal. *McComb v. District Court*, 36 Nev. 417; 136 P. 563.

7. Grounds for relief—Want or excess of jurisdiction.

Where a statute has imposed restrictions under which a court may act in matters otherwise within its jurisdiction, and those restrictions are disregarded, the party aggrieved may have a remedy by prohibition. *Walser v. Moran*, 42 Nev. 111; 173 P. 1149; 180 P. 492.

Where a stay of proceedings is had, and the court undertakes to exercise an unauthorized jurisdiction pending the stay, prohibition is a proper remedy. *O'Donnell v. District Court*, 40 Nev. 428; 165 P. 759.

8. Grounds for relief—Errors and irregularities.

There is no remedy by prohibition for the correction of errors or a mere irregularity in the exercise of an authority inherent in a court. *Walser v. Moran*, 42 Nev. 111; 173 P. 1149; 180 P. 492.

The office of the writ of prohibition is not to correct errors, but to prevent courts from transcending the limitation of their jurisdiction in exercise of judicial power. *Id.*

II. JURISDICTION, PROCEEDINGS AND RELIEF

9. Parties.

Where prohibition is sought to restrain enforcement of a judgment, a sheriff seeking to levy execution is a proper party; for, if the judgment be void for want of jurisdiction, then the sheriff, who draws all of his authority from the court, has no right to enforce the execution. *Gordon v. District*

Court, 36 Nev. 1; 131 P. 134; 44 L. R. A. (N.S.) 1078.

See Contempt, 1.

PROHIBITION ACT

See Constitutional Law, 14; Criminal Law, 17; Intoxicating Liquors, 1, 4, 6.

PROHIBITORY PROVISIONS

See Constitutional Law, 12.

PROMISSORY NOTES

See Intoxicating Liquors, 7; Parties, 3; Pledges, 1.

PROMULGATION OF STATUTES

See Criminal Law, 21.

PROOF

See Marriage, 3; Mortgages, 2; Reformation of Instruments, 1; Trial, 21.

PROOF OF DAMAGE

See Libel and Slander, 2.

PROPERTY

1. Evidence as to title.

1. Evidence as to title.

While presumption of ownership which flows from possession may be overcome by showing that some person other than the one in possession is the real owner, the mere introduction in evidence of an alleged bill of sale by a claimant of the property not in possession does not tend to give such claimant a stronger title than could have been asserted by the original consignor of the property who executed the bill of sale. *Bank of Italy v. Burna*, 39 Nev. 326; 156 P. 932.

The circumstances surrounding the passing of possession of a car from consignor to consignee not being disclosed, a presumption of law is raised, under the rule that possession of property is prima facie proof of ownership. *Id.*

In the absence of any showing of a better title or right, the bare possession of property is sufficient to indicate ownership, and to warrant a recovery by the occupant against a mere intruder. *Shearer v. City of Reno*, 36 Nev. 444; 136 P. 705.

See Divorce, 22, 23; Eminent Domain, 3, 7; Religious Societies, 1; Taxation, 19, 20; Trial, 21.

PROPERTY OF INFANT

See Homestead, 3.

PROPERTY RIGHTS

See Divorce, 22.

PROPHECY AS TO FUTURE INJURY

See Waters and Watercourses, 19.

PROSECUTING ATTORNEY, ARGUMENT OF

See Criminal Law, 63, 65, 66, 67, 68.

PROSTITUTION

1. Indictment or information.
2. Trial and review.

1. Indictment or information.

An indictment charging that the defendant permitted his wife to be in a house of prostitution, is sufficient to charge an offense under Rev. Laws, 6445, making it a felony for a person to connive at, consent to, or permit his wife being in any house of prostitution, the word "permit" in such indictment and statute meaning not merely failure to prevent, but requiring an active wish or at least willingness in defendant's mind that his wife remain in such house after knowledge that she is there. In *Re Jackson*, 37 Nev. 167; 140 P. 719.

2. Trial and review.

Courts judicially know that both the husband and wife usually have a powerful moral suasion over the actions of each other, and it is in this sense that the word "permit" is used in Rev. Laws, 6445. *Id.*

PROTECTION

See Fish, 2.

PROTECTION OF CLAIMANTS

See Mechanics' Liens, 10, 11.

PROTECTION OF INTEREST OF WIFE

See Homestead, 2.

PROTECTION OF WIFE

See Homestead, 3.

PROXIMATE CAUSE

See Master and Servant, 9; Negligence, 2, 3.

PROXIMATE CAUSE OF INJURY

See Master and Servant, 19.

PUBLICATION OF PROCESS

See Actions, 1.

PUBLICATION OF SUMMONS

See Divorce, 7; Judgment, 9; Process, 4.

"PUBLIC CHARITY"

See Perpetuities, 1.

PUBLIC DOCUMENTS

See Elections, 20.

PUBLIC GROUNDS

See Waters and Watercourses, 20.

PUBLIC HIGHWAYS

See Dedication, 1, 2, 3, 4, 5, 6.

PUBLIC LANDS**I. GOVERNMENT OWNERSHIP.**

1. Inclosure.
2. Offenses incident to disposal of public lands.

II. SURVEY AND DISPOSAL OF LANDS OF THE UNITED STATES.**(A) Surveys.**

3. Method and sufficiency.

(B) Entries, Sales, and Possessory Right.

4. Town sites.
5. Rules of land office—Force of.
6. Decisions of federal land office conclusive.

(E) School and University Lands.

7. Effect of reservation and grant to state.

(I) Proceedings in Land Office.

8. Conclusiveness and effect of decision.

(J) Patents.

9. Construction and operation.
10. Conclusiveness.

I. GOVERNMENT OWNERSHIP**1. Inclosure.**

The enforcement of a decree for the removal or destruction of an unlawful inclosure of public lands rendered under act of February 25, 1885, c. 149, sec. 2, 23 Stat. 321 (U. S. Comp. St. 1901, p. 1524), is within the police power of the United States to protect its property and is not an infringement of the constitutional rights of the owner of the inclosure. *Golconda Cattle Co. v. United States*, 201 F. 281; 119 C. C. A. 519.

Inside an inclosure maintained by defendant cattle company were 26,000 acres of government land and 11,000 acres of privately owned lands, nearly all of which belonged to defendant. The 11,000 acres were for the most part bottom lands, and almost completely surrounded the tract owned by the government. The tract was inclosed by a post-and-wire fence about 44 miles in length, none of which was on government land. There were some openings or gaps in the fence, but they were in most cases at and toward the east end of the field and were separated by long distances, so that they were not sufficient to afford reasonable and proper access to the government land. Held, that the inclosure as maintained was a violation of the act of Congress of February 25, 1885, c. 149, 23 Stat. 321 (U. S. Comp. St. 1901, p. 1524), prohibiting the inclosure of government lands by

a party having no claim or color of title thereto in good faith, so as to prevent the public use thereof, and therefore should be abated as a nuisance in the absence of the opening of further gaps therein not less than 100 feet long, nor more than 1½ miles apart. *United States v. Golconda Cattle Co.*, 196 F. 240.

Defendant cattle company maintained a post-and-wire fence 44 miles long around 37,000 acres of land, 26,000 of which was public land and 11,000 privately owned, the most of it by defendant. It was for the most part bottom land and practically surrounded that owned by the government. No part of the fence was on public land. There were about nine openings in the fence each 100 feet or more in length, but separated by long distances and somewhere the ground was very rough and almost inaccessible. Held, that it constituted an unlawful inclosure within the meaning of the act of February 25, 1885, c. 149, sec. 1, 23 Stat. 321 (U. S. Comp. St. 1901, p. 1524), the maintenance of which was properly enjoined under section 2 of the act. *Golconda Cattle Co. v. United States*, 201 F. 281; 119 C. C. A. 519.

The act of February 25, 1885, c. 149, sec. 1, 23 Stat. 321 (U. S. Comp. St. 1901, p. 1524), prohibiting inclosure of public lands to any of which land included within the inclosure the person or corporation making or controlling the inclosure has no claim or color of title made or acquired in good faith, in view of the conditions which led to its enactment, should receive a construction which will give effect to its broad purpose. The word "inclosure" as used herein cannot be restricted to meaning a complete encircling of the land with a fence without openings, but applies to any means whereby there is effected practical separation of public lands from the body thereof. *Id.*

Inclosure of any of the public land or maintaining such an inclosure, except by one making claim to the land in good faith, is made unlawful by the act of February 25, 1885, c. 149, sec. 1, 23 Stat. 321 (U. S. Comp. St. 1901, p. 1524), and the intent with which the inclosure was made or is maintained is immaterial in a suit in equity for an injunction under section 2. *Id.*

Defendant cattle company constructed and maintained a fence about forty miles long around 37,000 acres of land, 26,000 acres of which was public land. The remainder was mostly owned by defendant and practically surrounded that owned by the government. The fence was built entirely on such land, no part of it being on the government land, and there were nine openings in it, varying from 90 feet to 3,400 feet in length. It appeared from the evidence that the fence was not built with any intent to inclose the government land, nor to exclude the public from entering upon it for purposes of settlement, grazing, or other uses, but for the bona-fide protection of defendant's own lands. Held that, under

such facts, the fence did not constitute an "unlawful inclosure of public lands," within the meaning and intent of act of February 25, 1885, c. 149, sec. 1, 23 Stat. 321 (U. S. Comp. St. 1901, p. 1524), and the United States was not entitled to an injunction to restrain its maintenance under section 2 of the act. *Golconda Cattle Co. v. United States*, 214 F. 903; 131 C. C. A. 199.

2. Offenses incident to disposal of public lands.

After inclosure by a corporation of public domain, the act of Congress of February 25, 1885, c. 149, sec. 4, 23 Stat. 322 (U. S. Comp. St. 1901, p. 1525), which prescribed as punishment for unlawful inclosure a fine not exceeding \$1,000 "and" imprisonment not exceeding one year, was amended (Act March 10, 1908, c. 75, 35 Stat. 40 [U. S. Comp. St. Supp. 1909, p. 570]), so as to provide a fine "or" imprisonment, or both fine and imprisonment. Held, that a corporation cannot escape punishment on the theory that the act as amended operates retroactively as against it, and that punishment cannot be imposed under the original act because imprisonment is required as part of the punishment. *United States v. Pacific Live Stock Co.*, 192 F. 443.

Under the act of Congress of February 25, 1885, c. 149, sec. 4, 23 Stat. 322 (U. S. Comp. St. 1901, p. 1525), which prescribes a fine or imprisonment or both for unlawfully inclosing public lands, the maximum penalty should not be assessed against a corporation, and a fine of \$500 is adequate, where it appears that corporation's inclosure included about 2,695 acres, of which but 650 acres were public land, and where it appears that the inclosure was not solely intended to exclude settlers; the fence having been erected on the particular line thereof to save expense. *Id.*

II. SURVEY AND DISPOSAL OF LANDS OF UNITED STATES

(A) SURVEYS

3. Method and sufficiency.

The commissioner of the general land office held not justified in refusing to approve a survey of public land made by a deputy surveyor under a contract because of resurveys and retracements of prior lines made without express authority required by the contract and the manual of instructions made a part thereof, or because of the manner in which the field-notes were kept, where the manual expressly made it the duty of the surveyor-general to give specific instructions as to such matters on request, and the surveyor repeatedly asked for such instructions, and where, although both the commissioner and the surveyor-general were kept at all times advised of the work he was doing and the arrangement of the field-notes, no objection was made thereto until all had been completed. *Scully v. United States*, 197 F. 328.

The commissioner of the general land office is so far a representative of the gov-

ernment in respect to contracts for surveys of public lands as to be to all intents and purposes a party to the contract and bound by its terms as fully as the contractor, and, where his approval of the work is made necessary by the contract before the contractor is entitled to payment, he, as well as the surveyor-general under whose direct supervision the work is done, is bound to exercise the utmost good faith, and cannot refuse to approve the work because the contractor stopped before completing the survey of all land embraced in the contract, where he was advised to do so by the surveyor-general on the ground that the cost of the work already done reached the estimated amount of the contract. *Scully v. United States*, 197 F. 327.

Surveys of public lands made by plaintiff as a deputy surveyor under a contract with the United States held to have been correctly executed in the field on evidence showing that they were approved by the field examiner appointed by the surveyor-general for the state as authorized by Rev. St. sec. 2223 (U. S. Comp. St. 1901, p. 1362), and where, as shown by the plats, they did not differ from subsequent surveys made by others employed for the purpose by the government which were approved, although plaintiff's plats had been rejected. *Id.*

(B) ENTRIES, SALES AND POSSESSORY RIGHT

4. Town sites.

Under Comp. Laws, 349, requiring a fee of cents for each lot to be paid to the trustee to defray the expenses of the survey of the town site, the maximum fee for each lot is \$1. *Jennett v. Stevens*, 34 Nev. 128; 116 P. 601.

In Comp. Laws, 349, relating to the disposal of town sites, on the public lands of the United States providing that, where it shall become necessary in the opinion of the citizens of the town to make a survey of any town site to identify or locate the lots, streets or alleys, or squares, a fee shall be paid to the trustee to defray the expenses of the survey, there being no provision for obtaining an expression of opinion on the part of the citizens as to necessity for a survey, a claimant, who not only fails to show that the charge made by the trustee for a survey is illegal, but who relies on the survey made by him, will not be heard to question its validity as affecting the right of the trustee to compensation therefor. *Id.*

Under Comp. Laws, 345, authorizing a townsite trustee before issuing a deed of lots to receive for counsel fees, and for moneys expended in the acquisition of the title and for the administration of the trust, including reasonable charges for time and services while employed in such trust, not exceeding the sum of \$1 for each lot, the word "including" shows that the charges for time and services of the trustee were to be embraced within the maximum charge, which was also to be inclusive of counsel

fees and for moneys expended in the acquisition of the title and the administration of the trust. *Id.*

Under Comp. Laws, 341, providing that the townsite trustee within ninety days of the receipt of a patent for the town site shall give public notice thereof in a newspaper in the county in which the town shall be situated, it is not open to a lot claimant who files application for a lot in pursuance of a notice published on the receipt of a receiver's duplicate receipt from the federal land office before the issuance of the patent to question the sufficiency and regularity of the notice. *Id.*

Under Comp Laws, 345, providing that, after the issuance of a patent on townsite land, the corporate authorities or judge to whom the patent shall issue shall execute to the persons entitled thereto, a deed in fee simple for such lots on payment of their due proportion of the purchase money, together with their proportion of such sum as may be necessary to pay for the streets, alleys, squares, and public grounds, not to exceed 50 cents for each lot, etc., the words "together with" show that the limitation of 50 cents was the maximum that could be apportioned to buy all the land within the town site, inclusive of that within the streets, alleys, squares, and public grounds, and does not apply merely to the amount for the streets, alleys, squares, and public grounds. *Id.*

5. Rules of land office—Force of.

The rules and regulations of the land office, in so far as they are not in conflict with statutory provisions, have the force and effect of law. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 545; 138 P. 71.

6. Decisions of federal land office conclusive.

The decisions of the federal land office upon matters of fact, cognizable by it, in the absence of fraud or imposition, is conclusive everywhere else. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 543; 138 P. 71.

(E) SCHOOL AND UNIVERSITY LANDS

7. Effect of reservation and grant to state.

By act of June 16, 1880, c. 245, 21 Stat. 287, Congress granted to the State of Nevada 2,000,000 acres of land for school purposes, the act providing that the lands should be selected by the state authorities "from any unappropriated, nonmineral public land in said state—and when selected in conformity with the terms of this act the same shall be duly certified to said state by the commissioner of the general land office and approved by the secretary of the interior." The lands were selected by the state and the lists duly approved, and certified by the land department with the approval of the secretary. In 1883 the state sold and patented certain tracts which were afterward acquired by complainant. In 1908 defendant and his grantors located mining claims on the land in conformity with the mining laws of the United States. Held that, under the act, the duty of determining the character of the land selected,

as to being mineral or nonmineral, devolved upon the land department as a condition precedent to the certification of the lists; that, when such certification was made, an unconditional title passed to the state; and that defendant could not show to defeat such title that the determination was erroneous as to such tract, and that it was in fact mineral. *Southern Development Co. v. Enderson*, 200 F. 272.

Rev. St. sec. 2449 (U. S. Comp. St. 1901, p. 1516), which gives to a list of lands selected by a state under a grant, when approved and certified by the land department, the force and effect of a patent where the lands "are of the character contemplated by such act of Congress and intended to be granted thereby," but provides that, where they are not of such character, "the lists, so far as those lands are concerned, shall be perfectly null and void, and no right, title, claim or interest shall be conveyed thereby," cannot be construed as leaving the title to lands so conveyed under a grant of nonmineral lands subject to perpetual doubt and to be defeated by a subsequent discovery of mineral thereon, but in all such cases it is the duty of the land department to ascertain the character of the land before certifying the lists, and its determination of that fact, where the land is public land of the United States, and has not been reserved or otherwise disposed of, and is therefore within the jurisdiction of the department is conclusive against collateral attack and against direct attack, unless on the ground of fraud, etc. *Id.*

(I) PROCEEDINGS IN LAND OFFICE

8. Conclusiveness and effect of decision.

The determination by the federal land department of the character of public lands is conclusive, except in certain direct proceedings to set aside a patent for fraud, imposition, mistake, or the like. *Earl v. Morrison*, 39 Nev. 120; 154 P. 75.

(J) PATENTS

9. Construction and operation.

A reference in a patent to the official plat and survey makes such plat and field-notes of such survey a part of the description of the land granted, as fully as if they were incorporated at length in the patent. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 546; 138 P. 71.

10. Conclusiveness.

A patent to land issued by the general land office is the highest evidence of title, and is conclusive against the government and all claiming under junior patents or titles until set aside or annulled. It is not open to collateral attack except upon a showing that the land department had no jurisdiction to dispose of the land. *Round Mt. v. Round Mt. Sphinx*, 36 Nev. 543; 138 P. 71.

Courts are bound to presume, in the absence of a showing to the contrary, that a patent has been issued upon due and regular application. *Id.*

PUBLIC MINERAL LANDS

See Mines and Minerals, 1, 2, 10, 12.

PUBLIC NUISANCE

See Intoxicating Liquors, 6.

PUBLIC OFFICER AS CON-TRACTOR

See States, 3.

PUBLIC OFFICERS

See Schools and School Districts, 4; Statutes, 16.

PUBLIC POLICY

See Habeas Corpus, 14.

PUBLIC SCHOOLS

See Constitutional Law, 29; Schools and School Districts, 4; Statutes, 21.

PUBLIC SERVICE COMMISSIONS

1. Power to regulate charges.

1. Power to regulate charges.

An investment in a public utility, like the property of a railroad company, or a water or gas company, should under normal conditions receive a fair and reasonable rate, based upon the fair and reasonable valuation of the property or capital invested. *Water Co. of Tonopah v. Public Service Comm.*, 250 F. 304.

PUBLIC USE

See Eminent Domain, 1, 2, 3.

PUBLICITY COMMISSIONER

See States, 2.

PUNITIVE DAMAGES

See Carriers, 11; Damages, 5.

PURCHASER

See Vendor and Purchaser, 6, 7; Waters and Watercourses, 14.

QUALIFICATION AS CON-TRACTOR

See States, 3.

QUALIFIED ACCEPTANCE OF TERMS

See Contracts, 1.

"QUALIFIED ELECTOR"

See Grand Jury, 2.

QUALIFIED ELECTORS

See Elections, 2, 6.

QUANTUM

See Evidence, 24.

QUANTUM MERUIT

See Work and Labor, 1.

QUESTIONS FOR JURY

See Criminal Law, 71; Master and Servant, 31.

QUESTIONS IN DEPOSITION

See Depositions, 2.

QUESTIONS OF FACT

See Appeal and Error, 103, 105; Divorce, 13, 26; Judgment, 37; Trial, 10, 12.

QUESTIONS REVIEWABLE

See Appeal and Error, 26, 85.

QUIETING TITLE

I. RIGHT OF ACTION AND DEFENSES.

1. Title of plaintiff.

II. PROCEEDINGS AND RELIEF.

2. Pleading—Bill, complaint or petition.
3. Evidence.

I. RIGHT OF ACTION AND DEFENSES

1. Title of plaintiff.

Plaintiff, not claiming any title to realty, but seeking a decree directing that a sheriff convey to him real property sold under a judgment, the plaintiff being the purchaser's successor, cannot maintain an action to quiet title, which is based on the presumption that plaintiff has title. *Daly v. Lahontan Mines Co.*, 39 Nev. 14; 151 P. 514; 158 P. 285.

II. PROCEEDINGS AND RELIEF

2. Pleading—Bill, complaint or petition.

Neither under Rev Laws, 5514, nor independently of it, does a complaint state a cause of action to quiet title, if not alleging that defendants claim an interest in the property adverse to plaintiffs. *Clay v. Scheeline B. & T. Co.*, 40 Nev. 9; 159 P. 1081.

3. Evidence.

Where one comes into equity seeking equitable relief in aid of a legal title, he must first establish such legal title; and where it is doubtful the court will not grant the relief. *Moore v. Rochester W. M. Co.*, 42 Nev. 164; 174 P. 1017.

See Appeal and Error, 17, 18.

QUIETING TITLE TO MINING CLAIMS

See Estoppel, 8.

QUO WARRANTO**II. JURISDICTION, PROCEEDINGS, AND RELIEF.**

1. Parties plaintiff—Private persons.
2. Scope of inquiry and powers of court.

II. JURISDICTION, PROCEEDINGS, AND RELIEF**1. Parties plaintiff—Private persons.**

The court has jurisdiction to allow a writ of quo warranto on the relation of a defeated candidate for a state office to contest the election. *State v. Baker and Josephs*, 35 Nev. 300; 126 P. 345; 129 P. 452.

2. Scope of inquiry and powers of court.

Under Comp. Laws, 3279, 3280, authorizing the court to direct a reference when necessary for the information of the court, etc., the court, in quo warranto to contest an election to a state office, has jurisdiction to appoint a commissioner to count the undisputed ballots and report to the court for its information the actual ballots in dispute as well as the fact and number of undisputed ballots. *Id.*

See Elections, 20.

QUO WARRANTO BY STATE AGAINST FOREIGN COR- PORATIONS

See Removal of Causes, 4.

RAILROADS**II. RAILROAD COMPANIES.**

1. Officers and agents.
2. Actions by or against companies—Trial.

X. OPERATION.**(F) Accidents at Crossings.**

3. Contributory negligence of person injured—Reliance on precautions on part of railroad company.
4. Actions for injuries—Questions for jury.

(G) Injuries to Persons on or near Tracks.

5. Defects in roadbeds, tracks or equipment.
6. Actions for injuries—Instructions.

II. RAILROAD COMPANIES**1. Officers and agents.**

The authority of an agent cannot be inferred from his conduct and the fact that a station agent and section foreman of a railroad assume to generally manage the company's business in the vicinity warrants no inference of authority to lease or permit the construction of private dwellings on the right of way or to give away materials belonging to the company. *Mirodias v. S. P. Co.* 38 Nev. 119; 145 P. 912.

Railroad's contract for construction of fences along right of way, entered into by its vice-president, was valid, though contract was unauthorized by board of direc-

tors, the vice-president, as the managing agent of railroad, having apparent authority to bind railroad, notwithstanding Rev. Laws, 3520 (Stats. 1865, p. 427), providing for management of railroad by board of directors. *Bradley v. N. C. O.*, 42 Nev. 411; 178 P. 906.

2. Actions by or against companies—Trial.

As there was no evidence of the authority of such agents, the instruction, which did not define what was meant by reasonably general control, was misleading. *Mirodias v. S. P. Co.*, 38 Nev. 119; 145 P. 912.

X. OPERATION**(F) ACCIDENTS AT CROSSINGS****3. Contributory negligence of person injured—Reliance on precautions on part of railroad company.**

Ordinarily, where the safety gates maintained by a railroad company are open, there is an implied invitation to persons traveling the street to enter upon the crossing, and, while such persons are not relieved from the duty of taking reasonable precautions to avoid injury by moving trains, they may reasonably presume that the railroad company's servants have performed their duty in ascertaining that the crossing is safe, and hence, where the safety gates were open and plaintiff's view was obstructed, he was warranted in driving upon tracks, assuming that defendant's servant had discharged his duty and that crossing was clear for his passage. *Vascacillas v. Southern Pacific Co.*, 247 F. 8; 159 C. C. A. 226.

4. Actions for injuries—Questions for jury.

Where plaintiff, who drove onto defendant's tracks when safety gates were raised, saw a train approaching on the track in front of him, but, as it was a considerable distance away, drove across the track, and was caught when the gates toward which he was driving were lowered, the question whether plaintiff was guilty of contributory negligence in so driving on the tracks, and whether he was negligent in alighting from his vehicle, it appearing that he was injured when his team, frightened by the train, began to run after the gates were raised, held for the jury. *Id.*

It is not "negligence per se" to cross in front of a moving train, when the distance and speed of the train are such as not to render the crossing unsafe. *Id.*

(G) INJURIES TO PERSONS ON OR NEAR TRACKS**5. Defects in roadbeds, tracks or equipment.**

In the absence of wantonness, negligence of railroad company in backing its switch engine without a rear light, and in not keeping a lookout, will not make it liable for injury to a person running his velocipede car after dark, contrary to instructions, and using the track which he knew was regularly used for trains running in

the opposite direction. *Crosman v. Southern Pacific Co.*, 42 Nev. 92; 173 P. 223.

6. Actions for injuries—Instructions.

A general instruction, leaving it to the jury to apply the same standard of duty in the management of trains towards one on the track, whether rightfully or wrongfully there, is erroneous. *Id.*

See Abatement and Revival, 1, 2; Actions, 2; Carriers, 1, 2, 3, 4, 5, 20.

RAILROAD'S NEGLIGENCE

See Master and Servant, 12, 15, 19, 20.

RAPE

II. PROSECUTION AND PUNISHMENT.

(A) Indictment and Information.

1. Attempt.

(B) Evidence.

2. Weight and sufficiency—Attempt or assault with intent to rape.

II. PROSECUTION AND PUNISHMENT

(A) INDICTMENT AND INFORMATION

1. Attempt.

Under Rev. Laws, 6291, providing that an act done with intent to commit a crime, and tending, but failing, to accomplish it, is an attempt to commit that crime, and section 6442, declaring that carnal knowledge of a female child under 16 is "rape," an indictment alleging that the accused attempted to carnally know a female child of 13 by procuring her to get in bed with him and soliciting her to have intercourse with him with intent to rape is sufficient to charge an attempt to rape. *State v. Pierpont*, 38 Nev. 173; 147 P. 214.

(B) EVIDENCE

2. Weight and sufficiency—Attempt or assault with intent to rape.

In a precaution for assault with intent to rape, evidence held sufficient to show that the accused was the guilty person. *State v. Nelson*, 36 Nev. 404; 136 P. 377.

RATES

See Waters and Watercourses, 20.

RATES OF TRANSPORTATION

See Carriers, 1.

RATIFICATION OF ACTS OF AGENT

See Corporations, 7.

RATIFICATION OF CONVEYANCE

See Estoppel, 8.

READING BY OPPOSITE PARTY

See Depositions, 3, 4.

REAL ESTATE

See Forcible Entry and Detainer, 4; Taxation, 3.

REAL PARTY IN INTEREST

See Parties, 1, 3.

REAL PROPERTY

See Descent and Distribution, 3, 4; Gifts, 1; Libel and Slander, 8, 9; Trial, 21.

REALTY

See Landlord and Tenant, 1.

REASON FOR JUDGMENT

See Appeal and Error, 2.

REASONABLE CERTAINTY

See Libel and Slander, 5.

REASONABLE OR PROBABLE CAUSE

See Criminal Law, 16.

REASONABLENESS

See Licenses, 3.

RECEIPT FOR RENT

See Landlord and Tenant, 3.

RECEIVERS

III. TITLE TO AND POSSESSION OF PROPERTY.

1. Effect of appointment and qualification of receivers.
2. Remedies of general creditors as against property.

IV. MANAGEMENT AND DISPOSITION OF PROPERTY.

(A) Administration.

3. Representation by receiver of court and of parties.

VII. ACCOUNTING AND COMPENSATION.

4. Allowance and payment or recovery of compensation and expenses.
5. Settlement of account.

IX. LIABILITIES ON BONDS OR UNDERTAKINGS.

6. Conclusiveness of adjudication against receiver.

III. TITLE TO AND POSSESSION OF PROPERTY

1. Effect of appointment and qualification of receivers.

One securing the appointment of a receiver to take possession of the property of defendant and an injunction against alienation does not for that reason obtain a lien or preference over other interested parties. *Johnson v. Garner*, 233 F. 760.

A receivership does not operate as an attachment or execution, but is no more

than a sequestration of property for safe keeping, leaving the question as to who is entitled thereto for subsequent determination. *Id.*

2. Remedies of general creditors as against property.

A divorced wife, seeking to assert rights in the property which had composed the community estate of herself and her former husband, secured the appointment of a receiver and an injunction against disposal. Thereafter creditors of the husband, in the state courts, reduced their claims against him to judgment before his death. After the death of the husband, the federal court in which suit was brought determined to distribute the estate. Held that, while ordinarily the existence of a receivership suspends the power of creditors to obtain any lien or advantage over other interested parties, yet as this rule does not apply to a receiver pendente lite, where the sole object is to preserve the property for the purpose of the decree as between the parties to the suit, those creditors who reduced their claims to judgment before the death of the husband are entitled to that priority over the ordinary debts given by Rev. Laws Nev. sec. 6052, notwithstanding the federal court subsequently decided to distribute the entire estate. *Id.*

IV. MANAGEMENT AND DISPOSITION OF PROPERTY

(A) ADMINISTRATION

3. Representation by receiver of court and of parties.

It is the duty of a receiver to carefully and faithfully collect, protect, and enhance the assets of the institution of which he is receiver, and to administer its affairs to the end that its creditors and owners may receive what is justly due them. He is entitled to proper compensation for his services and an equitable allowance for administrative expenses. His duty is to all the parties in common, and he should not become an advocate of one creditor, or class of creditors, as against another creditor or creditors. *Esmeralda County v. Wildes*, 36 Nev. 526; 137 P. 400, 405.

VII. ACCOUNTING AND COMPENSATION

4. Allowance and payment or recovery of compensation and expenses.

The act of 1913 (Stats. 1913, c. 204), authorized the attorney-general to institute an investigation of all the affairs of a certain bank and trust company and of the receivership thereof, and to take necessary legal proceedings in any action then pending in any court affecting the affairs of the receivership of the bank, etc. Held that, where orders were entered in the receivership proceeding prior to the passage of such act allowing compensation to the receiver and his attorneys without notice served on the attorney-general otherwise than by publication, such orders were *ex parte* as to

him, and he was authorized by the act to appear on behalf of the state and contest their validity. *State v. Wildes*, 37 Nev. 57; 139 P. 505; 142 P. 627.

A party or person interested in an action wherein a receiver is appointed must be served, as provided by statute, with notice of a motion to fix his compensation, or the order is made *ex parte*. *State v. Wildes*, 37 Nev. 55; 139 P. 505; 142 P. 627.

5. Settlement of account.

The court, on hearing the final account of a receiver and the objections thereto, should specifically approve those portions of the account which it deems proper, and specifically disallow the items which in its opinion are illegal. *Martin & Co. v. Kirby*, 34 Nev. 205; 117 P. 2.

IX. LIABILITIES ON BONDS OR UNDERTAKINGS

6. Conclusiveness of adjudication against receiver.

An order in receivership proceedings, which directs the payment by the receiver of a specific sum to a designated creditor, and which authorizes the creditor to sue the receiver and his surety for the failure of the receiver to pay the claim within a specified time, cannot be collaterally attacked in an action by the creditor against a receiver and his surety. *Id.*

An order in receivership proceedings, which is binding on the receiver failing to appeal therefrom, is binding on his surety who, when sued on the bond, may not collaterally attack the order. *Id.*

See Appeal and Error, 10; Constitutional Law, 20.

RECEPTION OF PROPERTY FROM WRONGFUL POSSESSOR

See Trover and Conversion, 1.

"RECKLESS DISREGARD"

See Negligence, 12.

RECORD

See Appeal and Error, 46, 60.

RECORDATION

See Homestead, 3.

RECORDATION TO CONSTITUTE NOTICE

See Landlord and Tenant, 1.

RECORDING

See Homestead, 2.

RECORDING, NOTICE OF

See Liens, 1.

RECORD IN JUSTICE'S COURT

See Justices of the Peace, 3.

RECORD ON APPEAL

See Appeal and Error, 59, 62, 85, 87, 89, 91;
Criminal Law, 91, 101.

RECORD TITLE

See Adverse Possession, 4.

RECOUNT

See Elections, 18.

RECOVERY OF DAMAGES

See Assault and Battery, 2.

RECOVERY OF MINING CLAIMS

See Mines and Minerals, 20.

**RECOVERY OF PURCHASE
MONEY**

See Vendor and Purchaser, 6.

REDEMPTION

See Execution 2, 3; Mechanics' Liens, 13.

REDIRECT EXAMINATION

See Witnesses, 11.

REFEREES**III. REPORTS AND FINDINGS.**

1. Confirmation of report — Construction.

III. REPORTS AND FINDINGS

1. Confirmation of report—Construction.

Where a referee's report recited that the amount due from defendant to plaintiff was \$1,396.56, but expressly stated that he did not report on the issue as to whether this was due at the institution of the action, as that was a question of law, and the court "in all things allowed, approved, and confirmed" the report, and rendered judgment for the amount reported, the adjudication by the court of the amount found was, in effect, an adjudication by the court that the amount was due at the institution of the suit. *Goodin v. Pitt*, 36 Nev. 156; 134 P. 459.

REFERENDUM

See Constitutional Law, 11; Mandamus, 4;
Municipal Corporations, 4.

**REFORMATION OF AGREE-
MENT**

See Deeds, 2.

REFORMATION OF INSTRUMENTS**II. PROCEEDINGS AND RELIEF.**

1. Evidence—Presumptions and burden of proof.
2. Relief awarded.

II. PROCEEDINGS AND RELIEF

1. Evidence—Presumptions and burden of proof.

In suit to quiet title against defendant claiming under a conveyance which he prayed to have reformed to comply with plaintiff's agreement to convey, alleged in the answer, the burden of proof was on the defendant to establish his contention as to the description of the property intended to be conveyed by virtue of the original agreement. *Carey v. Clark*, 40 Nev. 151; 161 P. 713.

2. Relief awarded.

A written contract, in which an omission occurs through fraud or mistake, will not be reformed, in order to decree specific performance. *De Remer v. Anderson*, 41 Nev. 287; 169 P. 737.

**REFUSAL OF TRIAL COURT TO
MAKE FINDINGS**

See Appeal and Error, 92.

REFUSAL TO ACCEPT

See Sales, 7.

REFUSAL TO ANSWER

See Depositions, 2.

REFUSAL TO DELIVER WATER

See Waters and Watercourses, 26.

**REFUSAL TO FIND AS RE-
QUESTED**

See Appeal and Error, 125.

**REFUSAL TO HEAR MOTION FOR
NEW TRIAL**

See Appeal and Error, 8.

**REFUSAL TO PERMIT COMPLE-
TION OF CONTRACT**

See Damages, 8.

REFUSAL TO SET ASIDE WAIVER

See Jury, 2.

**REFUSAL TO STRIKE IRRELE-
VANT MATTER**

See Appeal and Error, 114.

REFUSAL TO TRANSFER STOCK

See Trover and Conversion, 2.

REFUSING REMOVAL OF ADMINISTRATOR

See Mandamus, 2.

REFUTATION OF WITNESS BY PHYSICAL LAWS

See Evidence, 25.

REGISTRATION

See Elections, 3, 4, 6.

REGULARITY OF CONVICTION

See Habeas Corpus, 10.

REGULARITY OF PROCEEDINGS IN TRIAL COURT

See Appeal and Error, 92.

REGULATION OF EXISTING RIGHT BY NEGATIVE WORDS

See Statutes, 41.

REGULATION OF USE OF PRIVATE PROPERTY

See Criminal Law, 1.

REHEARING

See Appeal and Error, 78; Costs, 16; Habeas Corpus, 12.

REJECTED CLAIMS AGAINST ESTATES

See Executors and Administrators, 10.

RELATIVE RIGHTS OF WATER-USERS

See Constitutional Law, 26.

RELEASE

III. PLEADING, EVIDENCE, TRIAL AND REVIEW.

1. Evidence—Weight and sufficiency.

III. PLEADING, EVIDENCE, TRIAL AND REVIEW

1. Evidence—Weight and sufficiency.

Where evidence is conflicting as to the due execution of a written release signed by the plaintiff in an action for personal injuries, the court will not disturb the verdict. *Peterson v. Silver Peak*, 37 Nev. 119; 140 P. 519.

See Master and Servant, 2.

RELEASE FROM LIABILITY

See Master and Servant, 35.

RELIEF

See Pleading, 48; Prohibition, 2.

RELIGIOUS SOCIETIES

1. Property and funds—Capacity to acquire and hold.

1. Property and funds—Capacity to acquire and hold.

Where a lot was given to a joss-house society in consideration that the Chinese inhabitants would locate in the vicinity of the lot, and of the society's improvements on the lot, the donor and his grantee are estopped from asserting the society's incapacity to take title to the lot. *Su Lee v. Peck*, 40 Nev. 20; 160 P. 18.

An unincorporated joss-house society can take title to real estate in this state under the common-law rule that land may be given to pious uses before there is a grantee competent to take, and that, in the meantime, the fee lies in abeyance and vests when the grantee exists. *Id.*

REMARK OF TRIAL COURT

See Criminal Law, 117.

REMARKS OF COUNSEL

See Criminal Law, 91.

REMARKS OF PROSECUTING ATTORNEY

See Criminal Law, 112.

REMEDIES

See Elections, 19; Execution, 1; Principal and Agent, 7; Prohibition, 2.

REMEDIES OF VENDOR

See Vendor and Purchaser, 6, 7.

REMEDY BY APPEAL

See Mandamus, 2.

REMEDY BY ATTACHMENT

See Attachment, 3, 4.

REMEDY BY WRIT OF ERROR

See Mandamus, 2.

REMEDY FOR INJURIES

See Master and Servant, 35.

REMOVAL OF CAUSES

II. ORIGIN, NATURE, AND SUBJECT OF CONTROVERSY.

1. Allegations in pleadings.

III. CITIZENSHIP OR ALIENAGE OF PARTIES.

(A) *Diverse Citizenship or Alienage.*

2. Citizenship of parties.
3. Controversies between a state and foreign states.
4. Controversies between a state or citizens thereof and foreign states or citizens.

(B) *Separable Controversies.*

5. Separate interests or claims in subject-matter or part thereof.

II. ORIGIN, NATURE, AND SUBJECT OF CONTROVERSY

1. Allegations in pleadings.

An action instituted in the state courts cannot be removed to the federal courts, on the ground that a question arising under the constitution or laws of the United States is involved, unless the complaint necessarily shows that such questions are involved; it being insufficient that they be raised by the other pleadings, or in anticipation of defenses. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 319.

III. CITIZENSHIP OR ALIENAGE OF PARTIES

(A) DIVERSE CITIZENSHIP OR ALIENAGE

2. Citizenship of parties.

Plaintiff, having been injured in Nevada by the operation of defendant's railroad train, brought suit in that state under a law of Nevada requiring prosecution of the action for damages against defendant in a Nevada state court, alleging that he was a citizen of Idaho, and that defendant was a Kentucky corporation. Defendant, believing the allegation of residence to be true, proceeded to trial, and at the close of plaintiff's case removed the cause on the theory that the evidence showed that plaintiff was a resident and citizen of Nevada. The proof showed that plaintiff in 1903 went to Idaho and remained there three years, after which he wandered around in search of work, without definite plans, intending, however, to return to Idaho in case he could not find work, and at the time of the accident he was on his way to Tonopah, Nevada, in search of work. He had no home in Nevada or fixed intention to make a home there, but was only remaining for the prosecution of the action. Held, that plaintiff was not a resident of Nevada, but of Idaho as alleged, and that the suit was not therefore removable. *Sherman v. S. P. Co.*, 192 F. 711.

3. Controversies between a state and foreign states.

Quo warranto proceeding by the state, on the relation of a city against a foreign

corporation, for failure to comply with its franchise, instituted by the attorney-general, under Rev. Laws, 5656-5659, 5663, as to quo warranto, held, an action by the state, and not the city, preventing removal for diversity of citizenship; a state not being a citizen. *State v. Reno Traction Co.*, 41 Nev. 405; 171 P. 375; L. R. A. 1918D, 847.

4. Controversies between a state or citizens thereof and foreign states or citizens.

An action by the state, under Rev. Laws, Nev. secs. 3657-3664, to collect taxes, cannot, though the defendant be a foreign corporation, be removed to the federal courts on the grounds of diversity of citizenship, because the state is not a citizen. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 319.

(B) SEPARABLE CONTROVERSIES

5. Separate interests or claims in subject-matter or part thereof.

Plaintiff sued to quiet title to the use of a portion of the waters of a creek, making defendants a cattle company and nine others arranged in groups. The cattle company was a nonresident. The complaint contained no allegation indicating that its use or appropriation of the water, or its claim of title thereto was in any way connected with the use, claim, or appropriation of any other defendant or defendants except that each defendant was interested in the same stream, the waters of which were insufficient to answer the aggregate demands of all, nor did it appear that the cattle company used any ditch or dam or irrigated any land in connection with any other defendant or defendants. Held, that there was a separable controversy between plaintiff and the cattle company. And that the suit was removable as to it. *McMullen v. Halleck Cattle Co.*, 193 F. 282.

REMOVAL OF COMMISSIONER

See Counties, 3, 5.

REMOVAL OF COUNTY OFFICER

See Officers, 4.

REMOVAL OF OFFICERS

See Constitutional Law, 15, 47; Statutes, 16.

REMOVING CATTLE BRANDS

See Animals, 1.

RENTALS

See Landlord and Tenant, 7.

REPAIRS

See Easements, 1.

REPEAL

See Divorce, 23; Statutes, 20, 34.

REPEALED ACTS

See Statutes, 17, 23.

REPEAL OF STATUTE

See Eminent Domain, 9.

REPEAL OF STATUTES

See Constitutional Law, 8; Municipal Corporations, 5, 9.

REPLEVIN**I. RIGHT OF ACTION AND DEFENSES.**

1. Title and right to possession of plaintiff.
2. Defenses.

II. JURISDICTION, VENUE, AND PARTIES.

3. Parties defendant.

III. PROCEEDINGS FOR TAKING AND REDELIVERY OF PROPERTY.

4. Proceedings for redelivery of property to defendant—Bonds or undertakings.

VI. TRIAL, JUDGMENT, ENFORCEMENT OF JUDGMENT AND REVIEW.

5. Judgment—Recovery of value of property.
6. Costs.

I. RIGHT OF ACTION AND DEFENSES**1. Title and right to possession of plaintiff.**

Deed whereby heir conveyed all the interest "he may now hold" or "may now have" in the estate was insufficient to establish ownership in grantees of his interest in a picture which constituted part of estate, where prior thereto he had conveyed to third party all his right, title, and interest to all property which he had received, or which he was to receive, from the estate. *Clark Company v. Francovich*, 42 Nev. 321; 176 P. 259.

2. Defenses.

In an action in claim and delivery to recover possession of personalty, which defendants held as warehousemen, proof that whatever interest they had as such had been transferred to a corporation which succeeded to the business is a good defense. *Fapp v. McQuillan*, 38 Nev. 117; 145 P. 962.

II. JURISDICTION, VENUE, AND PARTIES**3. Parties defendant.**

In claim and delivery to recover personalty held by warehousemen, the successors to the business, as well as the one whom the warehousemen asserted was the owner, are necessary parties. *Id.*

III. PROCEEDINGS FOR TAKING AND REDELIVERY OF PROPERTY**4. Proceedings for redelivery of property to defendant—Bonds or undertakings.**

Rev. Laws, 5128, relating to actions to recover possession of personal property, declares that the defendant may, within two days after the service of a copy of the affidavit and the undertaking, give notice to the sheriff, who has seized the property, that he excepts to the sureties, and, if he

fails to do so, he shall be deemed to have waived all objections to the sureties. Section 5129 declares that, at any time before the delivery of the property to the plaintiff, the defendant, if he does not except to the sureties, may claim the property upon giving to the sheriff a written undertaking executed by two or more sureties, and section 5130 declares that defendant's sureties, upon notice to the plaintiff of not less than two or more than five days, shall justify before the clerk or judge in the same manner as upon bail on arrest, and upon justification the sheriff shall deliver the property to the defendant. Held, that justification by defendant's sureties upon notice to plaintiff was a condition precedent to the delivery of the property to him: the plaintiff not being required to justify his sureties unless called upon by the defendant. *State v. Lamb*, 37 Nev. 19; 138 P. 907.

VI. TRIAL, JUDGMENT, ENFORCEMENT OF JUDGMENT AND REVIEW**5. Judgment—Recovery of value of property.**

Where, in replevin, there was no proof that the property had any rental value or that the plaintiff had sustained any special damage because deprived of its use, a judgment for plaintiff should be for the value of the property, with interest thereon from the date of its wrongful seizure until the date of the judgment. *Dillon v. Grutt*, 38 Nev. 46; 144 P. 741.

6. Costs.

A plaintiff in replevin who obtains a judgment is not entitled to recover attorney's fees or expenses incidental to the action other than the costs properly accruing to the prevailing party in any action. *Id.*

Under Rev. Laws, 5133, the sheriff may retain possession of property taken in claim and delivery until his fees and expenses are paid. *State v. Lamb*, 37 Nev. 20; 138 P. 907.

See Judgment, 27.

REPUDIATION OF TRUST

See Limitation of Actions, 9, 10.

REPUGNANCY

See Statutes, 39.

REPUTATION

See Criminal Law, 26.

REPUTATION OF DECEASED

See Criminal Law, 61.

REQUEST FOR INSTRUCTIONS

See Criminal Law, 79; Trial, 22.

REQUISITES IN MOTION FOR NEW TRIAL

See New Trial, 6.

REQUISITES OF INDICTMENT

See Criminal Law.

REQUISITES OF RECORD

See Justices of the Peace, 3.

REQUISITION FOR EXTRADITION

See Habeas Corpus, 2, 13.

RES ADJUDICATA

See Judgment, 30, 31, 35, 36.

RESCISSION

See Sales, 11.

RESCISSION OF CONTRACT

See Pleading, 3.

RES GESTÆ

See Criminal Law, 23.

RESERVATION OF TITLE

See Sales, 14, 16, 17.

RESIDENCE

See Divorce, 4, 5, 8, 11; Domicile, 1, 3.

RESIDENCE OF PLAINTIFF

See Divorce, 13.

RESIDENCE OUTSIDE OF STATE

See Process, 5.

RESIDUARY BEQUEST

See Wills, 8.

"RESIDUARY LEGATEE"

See Wills, 8, 9.

"RESIDUE"

See Wills, 8.

RESTORATION OF APPEAL

See Appeal and Error, 76.

RESTRAINING OF DESTRUCTION

See Waters and Watercourses, 18.

**RESTRICTING OR ENLARGING
MEANING OF STATUTE**

See Intoxicating Liquors, 4.

RETAILER, DEFINED

See Licenses, 4.

RETAIL SALES

See Intoxicating Liquors, 3.

RETAXING COSTS

See Costs, 17.

REVIEW

See Appeal and Error, 13, 14, 81, 91, 99, 103, 106, 109, 110, 112; Criminal Law, 101, 102, 105, 110; Habeas Corpus, 13.

**REVIEW OF APPOINTMENT OF
GUARDIAN**

See Insane Persons, 1.

REVIEW OF FINDINGS

See Appeal and Error, 109.

**REVIEW OF RULINGS UPON
EVIDENCE**

See Appeal and Error, 20.

REVIEW ON APPEAL

See Appeal and Error, 109, 110, 114, 122, 125.

REVIEW ON CERTIORARI

See Certiorari, 1, 2.

REVENUE

See Mandamus, 16, 18; Taxation, 13.

REVENUE AND TAXES

See Taxation, 22.

REVENUES OF CITY

See Municipal Corporations, 2, 9.

REVERSAL

See Costs, 14; Criminal Law, 118.

REVERSIBLE ERROR

See Criminal Law, 112.

"REVISION"

See Statutes, 18.

REVIVAL OF CAUSE

See Judgment, 34.

"REVIVE"

See Statutes, 18.

**REVIVOR OF STATUTE BY
TITLE**

See Statutes, 18.

REVOCATION OF OFFER

See Sales, 1.

RIGHT OF ADOPTED CHILD

See Adoption, 1.

REWARDS

1. Performance of service and conditions—Previous knowledge and acceptance of offer.
2. Performance of service and conditions—Sufficiency.

1. Performance of service and conditions—Previous knowledge and acceptance of offer.

Where the legislature by statute authorized the governor to offer rewards for the arrest and conviction of certain murderers, the persons taking such murderers without the knowledge that the rewards had been offered were nevertheless entitled thereto; knowledge of the offer not being a prerequisite to recovery in such case, since no contractual relation was contemplated by the legislature, the right to the reward following the performance of the service by the operation of law. *Smith v. State*, 38 Nev. 477; 151 P. 512; L. R. A. 1916A, 1276.

2. Performance of service and conditions—Sufficiency.

Where the legislature by statute authorized the governor to offer rewards for the arrest and conviction of certain murderers, which was done, upon killing such murderers while resisting arrest by force of arms, the members of a posse were entitled to the rewards; the killing being justifiable and operating as a lawful excuse for non-compliance with the full conditions of the reward. *Id.*

RIGHT OF APPEAL

See Appeal and Error, 1; Insane Persons, 1.

RIGHT OF CESTUI QUE TRUST

See Limitation of Actions, 13.

RIGHT OF HEIRS

See Descent and Distribution, 3, 4.

RIGHT OF INHERITANCE

See Adoption, 1.

RIGHT OF PLEDGEE TO SUE IN OWN NAME

See Parties, 3; Pledges, 2.

RIGHT OF POSSESSION

See Mines and Mining, 12.

RIGHT OF STATE TO DEAL WITH MARRIAGE STATUS

See Marriage, 1.

RIGHT OF SUBROGATION

See Bankruptcy, 7.

RIGHT OF WAY

See Easements, 1, 2; Eminent Domain, 6; Waters and Watercourses, 4.

RIGHTS ACQUIRED

See Eminent Domain, 4.

RIGHTS OF GUILTY PARTY

See Divorce, 22.

RIGHTS OF HEIRS

See Wills, 9.

RIGHTS OF LESSEE

See Landlord and Tenant, 1.

RIGHTS OF MORTGAGEE

See Mortgages, 4.

RIGHTS OF SUBROGATION

See Limitation of Actions, 11.

RIGHT TO ANSWER

See Mandamus, 19.

RIGHT TO CONTROL COMMUNITY ESTATE

See Husband and Wife, 4.

RIGHT TO JURY TRIAL

See Jury, 1.

RIGHT TO POSSESSION

See Forcible Entry and Detainer, 1, 4; Judgment, 27.

RIGHT TO RELIEF

See Arbitration and Award, 2.

RIGHT TO VOTE

See Elections, 3.

RIGHT TO WRIT OF PROHIBITION

See Prohibition, 7.

RISK

See Master and Servant, 11, 12.

ROADS

See Highways, 1.

ROBBERY

1. Force.
2. Indictment and information—Requisites and sufficiency.
3. Evidence—Admissibility.
4. Evidence—Weight and sufficiency.

1. Force.

Where defendant administered poison to produce unconsciousness and took money from cash register in saloon of which the unconscious person had charge, he was guilty of "robbery," defined by statute to be the unlawful taking of personal property from person of another or in his presence against his will by means of force or violence or fear of injury, since the administration of the poison constituted "force." *State v. Snyder*, 41 Nev. 453; 172 P. 364; L. R. A. 1918E, 933.

2. Indictment and information—Requisites and sufficiency.

An information, substantially following the form of the statute, charging that defendant wilfully, unlawfully, and feloniously took from a person certain goods and chattels of such person, was not defective because not specifically charging a taking with an intent to commit a larceny; the word "feloniously" being a sufficient averment of the intent necessary to constitute the offense. *State v. Switzer*, 38 Nev. 108; 145 P. 925.

3. Evidence—Admissibility.

Evidence that defendant, a few days prior to the alleged robbery, had in his possession a revolver similar in appearance to that used in the commission of the robbery and found on his person on his arrest a few days after the offense was committed was admissible. *Id.*

4. Evidence—Weight and sufficiency.

In a prosecution for robbery by administering chloral hydrate to render unconscious the barkeeper whose cash register was robbed, evidence connecting defendant with the crime, alleged to have been committed by himself and two others, held to sustain conviction. *State v. Snyder*, 41 Nev. 453; 172 P. 364; L. R. A. 1918E, 933.

In a prosecution for robbery by administering chloral hydrate to produce unconsciousness, evidence held not to show that the condition in which the person robbed was found could not have been so caused. *Id.*

See Criminal Law, 114.

RULES OF COURT

See Courts, 6; Motions, 2; New Trial, 7.

RULES OF FEDERAL LAND OFFICE

See Mines and Minerals, 15.

RULES OF SUPREME COURT

See Appeal and Error, 65.

RULING AS TO COSTS

See Costs, 15.

RULING ON CONFLICTING TESTIMONY

See Appeal and Error, 102.

RULING ON DEMURRER DEEMED EXCEPTED TO

See Appeal and Error, 47.

RULING ON MOTION TO STRIKE

See Appeal and Error, 84.

RULINGS ON EVIDENCE

See Criminal Law, 99.

SAFETY APPLIANCE ACT

See Master and Servant, 12, 15, 19, 20.

SAFETY APPLIANCES

See Master and Servant, 5, 6.

SALARY

See States, 2.

SALE

See Execution, 2, 3; Homestead, 2; Taxation, 19.

SALE OF CAPITAL STOCK

See Corporations, 1.

SALES

I. REQUISITES AND VALIDITY OF CONTRACT.

1. Offer to sell, and acceptance thereof.
2. Contracts by correspondence.
3. Illegality.

II. CONSTRUCTION OF CONTRACT.

4. Subject-matter—Quantity, and ascertainment thereof.
5. Price, expenses, and costs of transportation—Amount agreed on.
6. Time of delivery.

IV. PERFORMANCE OF CONTRACT.

- (C) *Delivery and Acceptance of Goods.*
7. Effect of default or delay in delivery.
- (D) *Payment of Price.*
8. Installments and deferred payments.

V. OPERATION AND EFFECT.

- (A) *Transfer of Titles as Between Parties.*
9. Specific articles or goods—Acts to be done before passage of title.

VII. REMEDIES OF SELLER.

- (E) *Actions for Price or Value.*
10. Nature and form.
11. Evidence—Weight and sufficiency.
12. Trial—Questions for jury.

VIII. REMEDIES OF BUYER.

- (C) *Actions for Breach of Contract.*
 13. Trial—Question for jury.

IX. CONDITIONAL SALES.

14. Construction and operation of conditions as between parties—Payment of price.
 15. Effect of assignment of contract.
 16. Waiver of condition or of forfeiture for breach.
 17. Remedies of creditors.

I. REQUISITES AND VALIDITY OF CONTRACT

1. Offer to sell, and acceptance thereof.

Seller, having offered to transfer title upon receipt of buyer's notes for unpaid purchase price, has the right to revoke such offer at any time prior to receiving such notes. *McCone v. Eccles*, 42 Nev. 451; 181 P. 134.

Seller's offer to transfer title upon receipt of buyer's notes for unpaid purchase price did not ripen into a complete contract until receipt by seller of buyer's notes. *Id.*

2. Contracts by correspondence.

Defendant wrote the S. Company that it would like to contract for 1,000,000 feet of lumber and would close a contract at that time, the lumber to be cut during the following season and delivered when dry, and prices to be based on a specified price-list then in vogue, and that, if this was satisfactory, it would consider the matter closed until the cutting started, when it would forward a cutting list. The company replied that it would furnish the quantity specified to be cut that season and shipped when dry, the prices to be based on the specified list. Thereafter plaintiff wrote defendant asking for a cutting order, and defendant replied asking if plaintiff would be in a position to furnish 1,000,000 feet. In response plaintiff wrote defendant referring to the previous correspondence and stating that it had succeeded the S. Company. Defendant thereafter sent a cutting order for 700,000 feet. Held, that these letters created a contract between the parties, as they evidenced a meeting of the minds as to the amount of lumber, the season in which it was to be cut, and the time of delivery. *Turner L. Co. v. Tonopah L. Co.*, 38 Nev. 338; 145 P. 914.

3. Illegality.

Generally where the vendor of goods merely has knowledge that the purchaser intends to use them for an immoral or illegal purpose, and does nothing to aid in carrying out such purpose, he is entitled to recover therefor. *Loose v. Larsen*, 40 Nev. 157; 161 P. 514; *L. R. A.* 1917B, 1166.

Generally where goods are sold for the express purpose of enabling the buyer to accomplish an unlawful or immoral purpose, there can be no recovery for their price. *Id.*

II. CONSTRUCTION OF CONTRACT

4. Subject-matter—Quantity, and ascertainment thereof.

A contract for the sale of narrow-gage ties used by a road prior to standard-gaging the same, which provides for the sale of all narrow-gage ties distributed at various places along the line, the agreement to remain in force until the company has delivered all of such ties, covers all the narrow-gage ties which the company removed in standard-gaging the track, or which it had on hand at the time the agreement was made, and the company could not exempt any ties it needed to build platforms, etc. *Henningsen v. T. & G. R. R. Co.*, 33 Nev. 208; 111 P. 36; 119 P. 774; 29 Ann. Cas. 1008.

5. Price, expenses, and costs of transportation—Amount agreed on.

Where a buyer of ties removed from a track in the construction of a standard gage contracted to accept a specified price for the ties which had been ordered by a third person, the buyer need not let the third person have ties at that price without limit as to time or number, when no definite number or period to cover further orders from the third person had been agreed on, but could charge a higher price, or refuse to make subsequent deliveries. *Id.*

6. Time of delivery.

Under a contract for the sale of lumber to be cut during the season of 1907 and delivered when dry, the seller might justifiably have shipped the lumber to the buyer when the lumber was dry without further shipping orders. *Turner L. Co. v. Tonopah L. Co.*, 38 Nev. 338; 145 P. 914.

IV. PERFORMANCE OF CONTRACT

(C) DELIVERY AND ACCEPTANCE OF GOODS

7. Effect of default or delay in delivery.

Defendant having repudiated the contract and refused to take the specified quantity of lumber, to save itself from loss plaintiff was compelled to dispose of the lumber at the best market price obtainable. Held, that damages should be computed on the basis of the difference between the contract price and the market price for lumber at or about the date of the repudiation of the contract. *Id.*

Defendant contracted to purchase from plaintiff 1,000,000 feet of lumber to be cut during the season of 1907 and delivered when dry, and sent plaintiff a cutting order for 700,000 feet. Plaintiff milled and manufactured all of the lumber of which the cutting order was given. There was some evidence that plaintiff was unable to make prompt delivery of specific shipping orders due to climatic conditions and scarcity of transportation facilities on a railroad; but no complaint as to this was made by defendant, and it never gave notice of a rescission or cancellation of the contract or did

any acts from which a rescission could be inferred. By reason of defendant's delay in furnishing plaintiff with specifications as to surfacing and sizing the lumber and to its acts in canceling shipping orders previously given and not reviving such orders owing to unsettled conditions, plaintiff was delayed in making deliveries, and, to meet the convenience of defendant, all of the lumber was not delivered during 1907. In 1908, plaintiff wrote defendant insisting that it take the lumber, and defendant replied stating that plaintiff was unable to take care of the orders offered it by defendant and that for that reason defendant would ignore plaintiff's letter and that plaintiff might take any action it might deem fit. Held, that plaintiff did not break the contract by failing to deliver the lumber during 1907, especially as there was nothing from which a failure to deliver the lumber when dry could be inferred, while defendant repudiated the contract by its letter mentioned. *Id.*

(D) PAYMENT OF PRICE

8. Installments and deferred payments.

Where a seller of property for delivery in installments failed to collect the price at the time of delivery, and accepted payments at varying times later, and continued to make deliveries, and did not present bills, other than those for which payments were made and accepted, and thereby allowed the delay in making payments to grow into a practice, until there was uncertainty as to the balance due, the seller could not cancel the contract without presenting a statement of the amount claimed to be due, or making some demand and giving the buyer an opportunity to pay. *Henningsen v. T. & G. R. R. Co.*, 33 Nev. 208; 111 P. 36; 119 P. 774; 29 Ann. Cas. 1008.

Where a seller of property for delivery in installments made deliveries without rendering statements or demanding payment at the time of delivery, and accepted payment later, he waived payment at the time of making deliveries, though entitled thereto under the contract. *Id.*

V. OPERATION AND EFFECT

(A) TRANSFER OF TITLES AS BETWEEN PARTIES

9. Specific articles or goods—Acts to be done before passage of title.

Where buyers enter into contract whereby title is to pass upon compliance with certain conditions imposed by seller, the conditions must be fully complied with before title passes. *McCone v. Eccles*, 42 Nev. 451; 181 P. 134.

VII. REMEDIES OF SELLER

(E) ACTIONS FOR PRICE OR VALUE

10. Nature and form.

Where the buyer refuses to accept goods manufactured on his order, the seller, not being at fault in the matter, may store or retain the goods for the buyer and sue for

the entire purchase price, or he may sell the goods, and recover the difference between the contract price and the price obtained on resale, or he may retain the goods as his own, and recover the difference between the market value at the time and place of delivery and the contract price. *Leyner Engineering Works v. Mohawk Con. Leasing Co.*, 193 F. 745.

11. Evidence—Weight and sufficiency.

In an action for the purchase price of a safe which, after being rejected by the buyer, was delivered by order of the salesman to a firm in which the original buyer was a partner, evidence held sufficient to warrant the jury in finding that there had been a mutual rescission of the original contract of sale if the salesman had authority to make such rescission. *H. H. M. Safe Co. v. Balliet*, 39 Nev. 164; 145 P. 941.

12. Trial—Questions for jury.

Where a written order for the purchase of a safe had a question mark in the place left in the order for the lettering to be put on the safe, and no designation as to the interior arrangement of the safe, it was a question of fact whether the order was conditioned, as claimed by the buyer, upon his future determination as to the lettering and the interior arrangement. *Id.*

VIII. REMEDIES OF BUYER

(C) ACTIONS FOR BREACH OF CONTRACT

13. Trial—Question for jury.

Where the facts on the issue of waiver of a provision in a contract of sale are admitted, or clearly established, the issue is one of law. *Henningsen v. T. & G. R. R. Co.*, 33 Nev. 208; 111 P. 36; 119 P. 774; 29 Ann. Cas. 1008.

IX. CONDITIONAL SALES

14. Construction and operation of conditions as between parties.

A conditional contract for the sale of mining machinery bound the buyer to deposit with a third person all bullion extracted from his mining properties until the price was paid, and provided that the title should remain in the seller until the price was paid. The buyer deposited bullion in excess of the price, under an agreement that the third person should apply the same in payment of labor claims, royalties on ore produced, and supplies furnished to the buyer for the operation of the property. Held, that the deposit of the bullion was not a payment of the price because the original contract was modified by the subsequent agreement. *Dillon v. Grutt*, 38 Nev. 46; 144 P. 741.

Under a conditional sale contract which stipulates that the chattels shall remain the property of the seller until paid for, title does not pass to the buyer obtaining and retaining possession, but not paying the price. *Id.*

15. Effect of assignment of contract.

Where a seller in a conditional sale contract reserving title until the price was paid assigned the contract, the assignee succeeded to the rights of ownership of the seller until the price was paid. *Id.*

16. Waiver of condition or of forfeiture for breach.

A conditional contract of sale which reserved the title in the seller until the price was paid was assigned by the seller, and thereafter the buyer gave a chattel mortgage of corporate stock to secure the price and for other claims due the assignee. The mortgage recited that the buyer had possession, but no title. Attached to the mortgage was an exhibit of the original contract which was also made a part of the mortgage. Held, that the mortgage reserved the title as against an execution creditor of the buyer. *Id.*

17. Remedies of creditors.

A conditional sale contract of mining machinery stipulated that the title should remain in the seller until the price was paid, and recited that the buyer had deposited 50,000 shares of the capital stock as security. The seller assigned the contract and thereafter the buyer executed to the assignee a chattel mortgage on 71,000 shares of stock including the 50,000 shares as security for the payment of the price and other debts due him. The mortgage expressly recognized that the conditional sale was in force and that the title remained vested in the assignee. Held, that the mortgage did not operate as a waiver of the original conditional sale, and the assignee was not bound to exhaust his mortgage security before asserting title to the machinery to recover the price as against an execution creditor of the buyer levying on the machinery. *Id.*

See Judgment, 27.

SALES WITHOUT DELIVERY

See Fraudulent Conveyances, 2.

SATISFACTION IN PART

See Appeal and Error, 13.

SCHEDULE OF RATES

See Carriers, 1.

SCHOOLS

See Schools and School Districts.

SCHOOLS AND SCHOOL DISTRICTS**II. PUBLIC SCHOOLS.****(C) Government and Officers.**

1. State boards and officers.
2. Boards and officers.

II. PUBLIC SCHOOLS—Contd.**(D) District Property, Contracts and Liabilities.**

3. School buildings—Authority and duty to provide.
4. Contracts—Making, requisites and validity.

(E) District Debt, Securities, and Taxation.

5. Constitutional and statutory provisions.
6. School taxes—Levy and assessment.

II. PUBLIC SCHOOLS**(C) GOVERNMENT AND OFFICERS****1. State boards and officers.**

Stats. 1911, c. 133, sec. 13, provides that claims for traveling expenses of deputy superintendent of public instruction, etc., shall be paid from the general fund. Stats. 1915, c. 177, sec. 28, provides for the actual traveling and office expenses of deputy superintendent of public instruction, district No. 3, \$1,750. Held, that the deputy superintendent of public instruction for such district could not recover under the first act cited for traveling expenses incurred during the year 1916; such act being superseded or suspended by the appropriation of the act of 1915. *McCracken v. State*, 41 Nev. 49; 167 P. 1001.

Const. art. 4, sec. 19, provides: "No money shall be drawn from the treasury but in consequence of appropriations made by law." Stats. 1915, c. 76, provides: "No warrant shall be drawn on the treasury, except there be an unexhausted specific appropriation, by law, to meet the same." Held, that Stats. 1911, c. 133, sec. 13, was sufficient to make appropriation for claims arising under it, and that, as the legislature made no appropriation in 1917, respondent's deputy superintendent of public instruction could recover under section 13 for expenses for the year 1917. *Id.*

2. Boards and officers.

Sections 68-70 of the general appropriation act of 1913, making provisions "for actual traveling expenses" for each of the five deputy superintendents of public instruction for the years 1913 and 1914, should be read in connection with section 13 of the general act relating to public schools (Rev. Laws, 3251), providing that "all claims for traveling expenses, including the cost of transportation and cost of living * * * while absent from their places of residence, * * * shall be paid from the general fund of the state." The fact that the word "actual" was used in the general appropriation act of 1913, in contradistinction to provisions of previous general appropriation acts, will not be deemed sufficient to manifest an intent upon the part of the legislature to limit the purpose of such appropriation while the amount appropriated is the same as made in previous appropriation bills and as recommended to the legislature by the state controller as

required by law. *Abel v. Eggers*, 36 Nev. 373; 136 P. 100.

(D) DISTRICT PROPERTY, CONTRACTS AND LIABILITIES

3. School buildings—Authority and duty to provide.

The act approved March 22, 1913 (Stats. 1913, c. 157), authorizing Elko County to issue bonds for, and to construct and equip, a high-school building in the town of Wells, was not repealed or amended by the act approved March 25, 1913 (Stats. 1913, c. 244), relative to the construction of county high-school buildings. *Dotta v. Hesson*, 38 Nev. 1; 143 P. 305.

4. Contracts—Making, requisites and validity.

Where defendant, after obtaining a contract to build a schoolhouse, obtained labor and materials from plaintiff, who was one of the trustees, defendant could not successfully claim that the contract was valid as between himself and the school district and invalid as between himself and the trustee, under Stats. 1907, c. 182, providing that no trustee shall be peculiarly interested in any contract made by the board of which he is a member. *Worrell v. Jurden*, 36 Nev. 85; 132 P. 1158.

Stats. 1907, c. 182, provide that no school trustee shall be peculiarly interested in any contract made by the board of trustees of which he is a member. Held, that where plaintiff, a school trustee, had no pecuniary interest or understanding with defendant at the time defendant's bid for the construction of a schoolhouse was accepted by the board, the fact that plaintiff was a trustee did not deprive him of the right to lawfully contract thereafter to furnish defendant materials to be used in the performance of his contract, nor afford defendant a defense to an action for the price. *Id.*

(E) DISTRICT DEBT, SECURITIES, AND TAXATION

5. Constitutional and statutory provisions.

The act of March 18, 1911 (Stats. 1911, c. 90, sec. 1), Rev. Laws, 3617, imposing a tax of 6 cents on the \$100 for the general school fund, was impliedly repealed by the act of March 20, 1911 (Stats. 1911, c. 133, sec. 135), Rev. Laws, 3374, imposing a tax of 10 cents on the \$100 for school purposes; the statutes being irreconcilably in conflict. *State v. Esser*, 35 Nev. 429; 129 P. 557.

6. School taxes—Levy and assessment.

Where the board of county commissioners had complied with Rev. Laws, 3618, requiring them, on or before the first Monday of March of each year, to fix the rate of county taxes for such year, designating the number of cents on each hundred dollars, and levy the state and county taxes on the taxable property, it was an ultimate act in

pursuance of that section and sections 3762, 3763, relating to their duties "to levy annually," such statutes contemplating but one annual tax levy; consequently mandamus would not lie to compel a levy under the subsequently enacted statute of March 9, 1915 (Stats. 1915, c. 78), permitting the county commissioners, in counties in which no high school is located, to a levy a county tax for high-school purposes for the benefit of any district high schools complying with certain conditions, the proper construction of such act being that the levy should be made at the time when the county levy is regularly made. *State v. Washoe Co. Comm.*, 38 Nev. 269; 149 P. 191.

See Constitutional Law, 29; Statutes, 21.

SCOPE AND PURPOSE OF STATUTE

See Intoxicating Liquors, 4.

SCOPE OF ANSWER

See Pleading, 7.

SCOPE OF CROSS-EXAMINATION

See Witnesses, 8.

SCOPE OF INQUIRY

See Habeas Corpus, 15.

SCOPE OF INQUIRY ON APPEAL

See Criminal Law, 90.

SCOPE OF MANDAMUS

See Mandamus, 1, 2, 15.

SCOPE OF REVIEW

See Appeal and Error, 64, 81, 95, 110; Certiorari, 1, 2.

SECURING COUNSEL

See Criminal Law, 51.

SELECTION OF HOMESTEAD

See Homestead, 2.

SELECTION OF MEMBERS

See Grand Jury, 3.

SELF-EXECUTING PROVISIONS

See Constitutional Law, 10.

SELF-SERVING STATEMENTS

See Criminal Law, 30.

SENTENCE

See Criminal Law, 78, 87.

SENTENCE UNDER PROHIBITION ACT

See Criminal Law, 17.

SEPARABLE PART OF DEMURRER

See Pleading, 16.

SEPARATE DOMICILE

See Divorce, 8; Domicile, 2, 4.

SEPARATE INFORMATIONS

See Criminal Law, 15.

SEPARATE PROPERTY

See Husband and Wife, 1, 2.

SEPARATE PROPERTY OF HUSBAND AND WIFE

See Homestead, 3.

SEPARATE PROPERTY OF WIFE

See Divorce, 22.

SEPARATE TRIAL

See Criminal Law, 55.

SEPARATION OF HUSBAND AND WIFE

See Habeas Corpus, 14.

SEPARATION OF POWERS OF GOVERNMENT

See Constitutional Law, 20.

SERVANT

See Master and Servant, 18.

SERVICE BY PUBLICATION

See Judgment, 1, 9, 33; Process, 4, 5.

SERVICE OF MEMORANDUM OF ERRORS

See Appeal and Error, 26.

SERVICE OF PROCESS

See Judgment, 1, 33.

SERVICE OF PROCESS ON CORPORATION

See Corporations, 15.

SERVICE OF SUMMONS

See Divorce, 15; Justices of the Peace, 4.

SERVICE OF SUMMONS BY PUBLICATION

See Divorce, 7.

SERVICE OF TRANSCRIPT

See Appeal and Error, 55.

SERVICE ON FOREIGN CORPORATION

See Constitutional Law, 46.

SERVICES OF ATTORNEY

See Limitation of Actions, 5.

SERVING COPY OF POINTS AND AUTHORITIES

See Appeal and Error, 65.

SERVING COPY OF TRANSCRIPT

See Appeal and Error, 65.

SERVING COST BILL

See Costs, 17.

SERVING MEMORANDUM OF ERRORS

See Appeal and Error, 18, 56.

SETTING ASIDE DECREE

See Divorce, 17.

SETTING ASIDE WAIVER

See Jury, 2.

SET-OFF

See Bills and Notes, 4.

SET-OFFS TO CLAIM AGAINST ESTATE

See Executors and Administrators, 10.

"SHALL"

See Licenses, 5.

SHERIFF

See Attachment, 5.

SHERIFFS AND CONSTABLES**II. COMPENSATION.**

1. Agreement as to fees.
2. Custody and care of property.
3. Collection and payment of money—Commissions.

III. POWERS, DUTIES AND LIABILITIES.

4. Authority of deputies.
5. Liabilities for acts or omissions of deputies or assistants.

II. COMPENSATION**1. Agreement as to fees.**

The constable of a town, who performs services, the fees for which are fixed by statute, may not accept a greater sum, nor may the county commissioners tender a less sum; and an agreement to accept a greater is illegal, and an agreement to accept a less sum is void, as contrary to public policy. *Wolf v. Humboldt County*, 36 Nev. 26; 131 P. 964; 45 L. R. A. (N.S.) 762.

2. Custody and care of property.

A sheriff, incurring expenses in preserving attached property, may recover from plaintiff in attachment or from the trustee in bankruptcy of the debtor, adjudged a bankrupt after the attachment, and he must look to one or both for reimbursement. *Allen v. Ingalls*, 33 Nev. 281; 111 P. 34; 114 P. 758; 30 Ann. Cas. 755.

3. Collection and payment of money—Commissions.

Under Comp. Laws, 2472, fixing the sheriff's commission for receiving and paying over money on execution where lands or personal property have been sold at three-fourths of 1 per cent, on all sums over \$1,500, and allowing only one-half per cent for receiving and paying over money on execution without levy, a sheriff who sells land under execution is entitled to his commission, even if it is bought in by the judgment creditor for the amount of the judgment. *Roberts v. Ingalls*, 36 Nev. 325; 135 P. 927; 48 L. R. A. (N.S.) 542; Ann. Cas. 1915C, 1119.

Although Comp. Laws, 2472, fixing the fees of sheriffs, provides that the fees shall be collected from the defendant by virtue of the execution, the sheriff is not required to look to the judgment debtor personally, but rather to property held under execution, and so can make the payment of his fees a condition precedent to the execution of a certificate of sale, even though the property is bought in by the judgment creditor for the amount of the judgment. *Id.*

III. POWERS, DUTIES AND LIABILITIES**4. Authority of deputies.**

Where a sheriff gave to his deputy an attachment to execute, without saying anything as to the employment of a keeper, and the writ could not be executed without taking possession of personal property, the deputy, empowered by Comp. Laws, 2242, to perform the duties devolving on the sheriff, could employ, if necessary, a keeper of the attached property. *Allen v. Ingalls*, 33 Nev. 281; 111 P. 34; 114 P. 758; 30 Ann. Cas. 755.

5. Liabilities for acts or omissions of deputies or assistants.

A deputy, receiving from the sheriff a writ of attachment to execute, remained in charge of the personal property attached for a time, and then employed a third per-

son as keeper, and notified the sheriff, who expressed approval. The attached property thereafter remained in the possession of the third person with the sheriff's knowledge, and was finally delivered by the third person to another on the sheriff's order. Held, that the sheriff ratified the deputy's employment of the third person as keeper, and was liable for the third person's services, if such ratification was necessary to bind him. *Id.*

See *Replevin*, 4, 6.

SIDE LINES

See *Mines and Minerals*, 13.

SIGNATURE

See *Mortgages*, 2; *Wills*, 2, 3.

SINGLE CAUSE OF ACTION

See *Action*, 4.

SLANDER OF TITLE

See *Libel and Slander*, 8, 9, 10.

SLEEPING-CARS

See *Carriers*, 20.

SOCIAL CLUBS

See *Intoxicating Liquors*, 2.

SODOMY

1. Nature and elements of offense.
2. Indictment and information.

1. Nature and elements of offense.

Rev. Laws, 6459, punishing the infamous crime against nature, must be construed according to the fair import of its terms, so that its objects may be effective. In *Re Benites*, 37 Nev. 145; 140 P. 436.

2. Indictment and information.

Rev. Laws, 6459, punishing the "infamous crime against nature" either with man or beast, includes all unnatural acts in whatever form or by whatever means they are perpetrated, and an indictment charging that accused did unlawfully commit "the infamous crime against nature" with a man, stating the manner of the act, was sufficient. *Id.*

See *Criminal Law*, 78.

SOLEMNIZATION OF MARRIAGE

See *Marriage*, 2.

SOURCE OF AUTHORITY FOR PLEADING

See *Pleading*, 1.

SPECIAL APPEARANCE

See *Justices of the Peace*, 9.

SPECIAL DAMAGE

See Animals, 2.

SPECIAL DAMAGES

See Libel and Slander, 3, 7.

SPECIAL DEFENSES

See Pleading, 11.

SPECIAL FINDINGS

See Appeal and Error, 130; Trial, 28, 29.

SPECIAL FUND

See Municipal Corporations, 9.

SPECIAL INSTRUCTIONS

See Criminal Law, 76.

SPECIAL ORDER AFTER FINAL JUDGMENT

See Appeal and Error, 8.

SPECIAL PROCEEDINGS

See Insane Persons, 1.

SPECIAL TRAIN

See Carriers, 11; Courts, 23.

SPECIFIC ENUMERATION

See Intoxicating Liquors, 4.

SPECIFIC PERFORMANCE**II. CONTRACTS ENFORCEABLE.**

1. Contracts relating to personal property—Corporate stock or securities.

III. GOOD FAITH AND DILIGENCE.

2. Payment of consideration or tender thereof.

IV. PROCEEDINGS AND RELIEF.

3. Pleading—Bill or complaint.
4. Evidence—Presumptions and burden of proof.
5. Evidence—Weight and sufficiency.

II. CONTRACTS ENFORCEABLE

1. Contracts relating to personal property—Corporate stock or securities.

Where a bill for specific performance of a contract for the sale of mining stock did not show that the stock could not be purchased in the market, and that its pecuniary value was not readily ascertainable, or that it had a peculiar value to plaintiff, it did not state a case for specific performance. *Eckley v. Daniel*, 193 F. 279.

III. GOOD FAITH AND DILIGENCE

2. Payment of consideration or tender thereof.

Where vendors by placing a mortgage on

property and by conveying it to another had put it out of their power to perform their contract of sale, the vendees were not bound to tender the remainder of the purchase price or to allege such tender as a condition precedent to its right to maintain a suit for specific performance, and this though a demand was made for the deeds. *English v. Mound House Plaster Co.*, 192 F. 717.

IV. PROCEEDINGS AND RELIEF**3. Pleading—Bill or complaint.**

In a suit by the assignee of a contract for the sale of real property for specific performance, it was not necessary that the bill should allege that the assignment was in writing. *Id.*

4. Evidence—Presumptions and burden of proof.

One seeking specific performance of a contract whereby he was to inherit the property of others has the burden of proof, and specific performance will be denied unless the contract is established by clear and satisfactory evidence. *Forsyth v. Heward*, 41 Nev. 306; 170 P. 21.

5. Evidence—Weight and sufficiency.

In an action for specific performance of an agreement to leave plaintiff real property in consideration of her remaining with and caring for deceased during his declining years, evidence held sufficient to warrant specific performance, showing that possession was given to plaintiff, and that, in reliance upon the agreement, she had changed her position in such a manner that she could not be made whole by damages. *Clow v. West*, 37 Nev. 267; 142 P. 226.

SPECIFICATION OF ERROR

See Appeal and Error, 2, 6.

SPECULATIVE EXPENDITURES

See Executors and Administrators, 5.

SPEEDY DISCHARGE OF TRUST

See Executors and Administrators, 5.

SPIRITUOUS LIQUORS

See Intoxicating Liquors, 4.

SPLITTING CAUSES

See Eminent Domain, 11.

SPRINGS

See Waters and Watercourses, 2, 3, 5.

STATE CONTROLLER

See Mandamus, 1, 4.

STATE ENGINEER

See Constitutional Law, 20, 26, 42, 45; Eminent Domain, 1.

STATE FUNDS

See States, 4.

STATE GOVERNMENT

See Schools and School Districts, 2; States, 8.

STATE LICENSES

See Intoxicating Liquors, 3.

STATE NOT A CITIZEN

See Removal of Causes, 4.

STATE TAX COMMISSION

See Mandamus, 16, 18; Taxation, 13.

STATE TREASURER

See States, 8.

STATEMENT OF CAUSE OF ACTION

See Pleading, 5.

STATEMENT ON APPEAL

See Appeal and Error, 43, 50, 52, 62.

STATEMENT TO POLICE

See Criminal Law, 45, 110.

STATEMENTS OF DEFENDANT

See Criminal Law, 29, 110.

STATES**II. GOVERNMENT AND OFFICERS.**

1. Eligibility to office.
2. Compensation of officers, agents, and employees—Compensation of particular agents or employees.
3. Individual interest of officer.

IV. FISCAL MANAGEMENT, PUBLIC DEBT, AND SECURITIES.

4. General funds.
5. Appropriations—Necessity.
6. Appropriations—Making and requisites.
7. Appropriations—Operation and effect.

V. CLAIMS AGAINST STATE.

8. Nature of claims required to be presented.

II. GOVERNMENT AND OFFICERS**1. Eligibility to office.**

Under Stats. 1913, c. 128, sec. 1, creating the office of exposition commissioner of the state for the Panama-Pacific and the Panama-California expositions, and authorizing the governor to appoint an exposition commissioner, and section 2, creating the board of directors for the state for such expositions, whose duty it shall be to employ superintendents, clerks, and other persons upon such terms as may be deemed just and equitable to carry out the provisions of that act, and to cooperate and

advise with the exposition commissioner, the position occupied by a superintendent so employed was not an "office" within Const. art. 4, sec. 8, providing that no senator or member of assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under the state, which shall have been created or the emoluments of which shall have been increased during his term, except such office as may be filled by election by the people, as the term "office" embraces the ideas of continued duration, fees, or emoluments and duties, and such superintendent was intrusted with none of the sovereign power of the state, his compensation, period of employment, and the details of his duties being all matters of contract with the board of directors, especially as he was not required to take an oath as required by Const. art. 15, sec. 2. In the case of officers, indicating that the state officers did not consider him an officer. *State v. Cole*, 38 Nev. 215; 148 P. 551.

2. Compensation of officers, agents, and employees—Compensation of particular agents or employees.

The act of March 29, 1907 (Stats. 1907, c. 185), sec. 3, provides that the chairman of the state industrial and publicity commission shall receive, as compensation for his services, to be paid out of the state treasury, the sum stated, and the other two members shall serve without compensation. Section 4 provides that the commission may appoint a secretary "at a salary of not more than \$1,800 per annum, and may employ such other experts as may be necessary to perform any service that may be required of them, and shall fix their compensation payable out of such contributions" as may be made by the various counties and private individuals. Section 6 permits the commission to solicit private contributions, but prohibits them from receiving money in payment for specific services. Section 8 permits the various counties to allow a certain sum to the commission. Section 9 requires the expenditures for necessary office supplies, etc., to be audited and paid for as other state expenses are paid for, and section 10 requires the commission to report every six months a detailed statement of all sums received, showing from what source received, and for what purpose expended. Held, that the salary of a secretary of the commission, appointed at a fixed salary, was payable only out of the contributions received, and not from the state treasury, so that the state controller could not be compelled to draw warrants for such salary. *Mighels v. Eggers*, 36 Nev. 364; 136 P. 104.

3. Individual interest of officer.

Rev. Laws, 2827, making it unlawful for any member of the legislature to become a contractor under any contract authorized by the legislature of which he is a member, does not prohibit a member of the legislature from entering into a contract for the

construction of highways, which contract grew out of a legislative enactment passed by a former legislature of which he was not a member. *Berney v. Highway Dept.*, 42 Nev. 423; 178 P. 978.

IV. FISCAL MANAGEMENT. PUBLIC DEBT. AND SECURITIES

4. General funds.

All moneys coming into the state treasury constitute a part of the general fund, unless the placing thereof in a special fund is specifically authorized by the constitution or a statute. *State v. McMillan*, 34 Nev. 264; 117 P. 506.

Neither the act of March 20, 1909 (Stats. 1908-09, c. 131), sec. 7, an act for construction of a state prison, providing that for the purpose of carrying out the act \$100,000 is appropriated out of the general fund in the state treasury, to be transferred to the state prison building fund, on warrants drawn by the state controller after all claims and demands therefor have been audited and allowed by the state board of prison commissioners and the state board of examiners, nor the act of March 23, 1909 (Stats. 1908-09, c. 153), sec. 1, an act for a state loan, appropriating the sum of \$105,000 for the purpose of enabling the state board of prison commissioners to carry out the provisions of said prior act, authorizes the transfer of any money from the general fund of the state into the state prison building fund, in excess of claims audited and allowed by said boards of prison commissioners and examiners; so that an attempted transfer in excess thereof is void. *Id.*

5. Appropriations—Necessity.

Before the state controller is bound to draw a warrant for official salaries, it must appear by statute that an appropriation has been made, and that the state has obligated itself to pay such salaries from the state treasury. *Mighels v. Eggers*, 36 Nev. 364; 136 P. 104.

6. Appropriations—Making and requisites.

In the absence of anything to the contrary in the statute, the act of March 17, 1911, sec. 6 (Rev. Laws, 4491), fixing the salary of the commissioner of industry, agriculture, and irrigation, and directing that it be payable in equal monthly installments by the state treasurer on warrants drawn by the state controller, is a sufficient appropriation out of the state general fund. *State v. Eggers*, 35 Nev. 250; 128 P. 986.

No particular form of words is necessary for the purpose of an appropriation, and an appropriation may be made in one year of the revenues to accrue in another or future year. *McCracken v. State*, 41 Nev. 40; 167 P. 1001.

The act of March 17, 1911, sec. 7, part of the act (Rev. Laws, 4486-4494) creating the state bureau, and the office of commissioner of industry, agriculture, and irrigation, and defining its objects and purposes, does not, by section 7, appropriating

\$25,000 to carry out "the purposes of this act," and providing that all disbursements from it shall be on certificate of the commissioner, approved by the state board of examiners, indicate that such appropriation includes the salary of the commissioner, which section 6 fixes and declares payable in equal monthly installments by the state treasurer on warrants drawn by the state controller; Const. art. 5, sec. 21, expressly excluding salaries of officers "fixed by law" from the claims against the state which the board of examiners shall pass on, and "purposes" indicating something to be accomplished rather than an existing fact, so that the bureau and office of commissioner were but means for the subsequent accomplishment of the purposes of the act. *State v. Eggers*, 35 Nev. 250; 128 P. 986.

7. Appropriations—Operation and effect.

The setting apart in a general appropriation bill of various funds to cover payment of salaries and other expenses of the state government, while it may reserve the money for that purpose, does not, in itself, authorize the payment of the money from the fund. *State ex rel. Fowler v. Eggers*, 33 Nev. 535; 112 P. 699.

V. CLAIMS AGAINST STATE

8. Nature of claims required to be presented.

The constitution, art. 5, sec. 21, constitutes the governor, secretary of state, and attorney-general a board of examiners to examine claims against the state, except the compensation of officers fixed by law. Article 4, section 19, provides that no money shall be drawn from the state treasury except to meet appropriations made by law. Article 5, section 22, provides that the state treasurer and state controller shall perform duties prescribed by law. Rev. Laws, 4450, requires all claims against the state, provided for by appropriation, but not liquidated, to be presented to the board of examiners for approval, and that the controller shall not allow them unless so approved. Section 4157 defines the general duties of the state controller, section 4158 requires him to audit all claims against the state for which appropriation has been made, of which the amount has not been definitely fixed by law, and which have been examined and approved by the board, and to allow claims as provided by law, and section 4159 requires him to draw all warrants upon the treasury and to account therefor. The act relating to the compensation of workmen (Stats. 1913, c. 111), receiving injuries in the course of their employment resulting in death, creates an industrial insurance commission, composed of the governor, state mining inspector, attorney-general and two others named by them, and a state insurance fund derived from premiums paid by such employers as accept the terms of the act, and by section 24 provides that all premiums shall be paid to the state treasurer, and by section 40 that the state shall not be liable for any compensation under the act except from

such funds. Held, that the "state treasury" did not include the state insurance fund, which was a special fund given to the treasurer in trust, as distinguished from the general taxes and revenues of the state, and that the requirement for presentation of claims to the board of examiners and the issuance of warrants by the controller did not apply. *State v. McMillan*, 36 Nev. 383; 136 P. 108.

See Banks and Banking, 2, 6, 7.

STATUS OF MARRIAGE

See Marriage, 1.

STATUTE APPLICABLE

See Limitation of Actions, 2.

STATUTE OF FRAUDS

V. AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR.

1. Intent of parties.
2. Possibility of discharge or other termination without performance.

VI. REAL PROPERTY AND ESTATES.

3. Creation of estates or interests.

IX. OPERATION AND EFFECT OF STATUTE.

4. Contracts implied by law on part performance.

V. AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR

1. Intent of parties.

An oral agreement to bear one-third of the expenses of developing a mining claim covered by a two-year lease in consideration of an assignment of a one-third interest is not void under the statute of frauds, where the parties contemplate that the development work shall be completed within a year. *Girton v. Daniels*, 35 Nev. 438; 129 P. 555.

2. Possibility of discharge or other termination without performance.

An oral agreement to bear one-third of the expenses of developing a mining claim covered by a two-year lease was not void under the statute of frauds, where the lease could have been terminated by the act of the parties within one year according to its specific provisions. *Id.*

VI. REAL PROPERTY AND ESTATES

3. Creation of estates or interests.

An oral agreement between the plaintiff, a part owner of a mining claim, and one defendant, by which the latter was to perform assessment work on the claim for 1900, and the plaintiff was to convey to him an undivided one-fourth of the claim, and the defendant was also to relocate another claim in the joint names of plaintiff and defendant in consideration of plaintiff's refraining from performing assessment work on the claim, is not void under Rev. Laws, 1083, providing that no interest in

lands shall hereafter be created, granted, or assigned unless by act or operation of law, or by deed or conveyance in writing. *Hornsilver Cases*, 35 Nev. 447; 130 P. 760, 764; 134 P. 448, 449.

IX. OPERATION AND EFFECT OF STATUTE

4. Contracts implied by law on part performance.

Where a one-third interest in a mining lease is assigned in consideration of an oral agreement to bear one-third of the expense of development, and the other contracting party pursuant to the agreement thereafter does the development work and advances money to pay such expense, the assignee is liable on quantum meruit for his share of the work and expense, though their agreement be void under the statute of frauds. *Girton v. Daniels*, 35 Nev. 438; 129 P. 555.

See Frauds, Statute of; Trusts, 2.

STATUTE OF LIMITATIONS

See Equity, 5; Limitation of Actions, 11, 12.

STATUTES

I. ENACTMENT, REQUISITES, AND VALIDITY.

1. Validity and sufficiency of provisions—Certainty and definiteness.
2. Determination of validity of enactment—Presumptions and construction in favor of validity.
3. Effect of partial invalidity.

II. GENERAL AND SPECIAL OR LOCAL LAWS.

4. Laws of general or public nature.
5. Uniformity of operation of general laws—Subject-matter.
6. Applicability of general law as affecting validity of special or local law.
7. Laws of special, local, or private nature.
8. Regulation of personal status, rights, and relations.
9. Establishment and regulation of schools.

III. SUBJECTS AND TITLES OF ACTS.

10. Expression in title of subject of act.
11. Titles and provisions of acts relating to particular subjects—Civil remedies and proceedings.
12. Titles and provisions of acts relating to particular subjects—Crimes and criminal prosecutions and punishments.
13. Titles and provisions of acts relating to particular subjects—State government and administration thereof.
14. Titles and provisions of acts relating to particular subjects—Counties, towns, and municipal corporations.
15. Titles and provisions of acts relating to particular subjects—Schools and school districts.
16. Titles and provisions of acts relating to particular subjects—Public officers.

IV. AMENDMENT, REVISION, AND CODIFICATION.

17. Title of amending act.
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41. Construction as mandatory or directory.

(B) Particular Classes of Statutes.

42. Penal statutes.

(C) Time of Taking Effect.

43. Date fixed in act.

I. ENACTMENT, REQUISITES, AND VALIDITY**1. Validity and sufficiency of provisions—Certainty and definiteness.**

Criminal laws must be plainly written, so that every person may have an opportunity to know with certainty what acts or omissions constitute crime. *Eureka Bank Cases*, 35 Nev. 82; 126 P. 655; 129 P. 308.

2. Determination of validity of enactment—Presumptions and construction in favor of validity.

All acts of the legislature are presumed to be valid until it is clearly shown that they are unconstitutional. *State v. Brodigan*, 37 Nev. 492; 143 P. 306.

3. Effect of partial invalidity.

Where a part of a section of a statute is unconstitutional, such invalidity will not necessarily prevent the enforcement of the remainder. *Ormsby County v. Kearney*, 37 Nev. 316; 142 P. 803.

The unconstitutionality of one section of a law does not destroy the validity of other provisions which can stand independent of such section. *Turner v. Fogg*, 39 Nev. 406; 159 P. 56.

II. GENERAL AND SPECIAL OR LOCAL LAWS**4. Laws of general or public nature.**

The act of December 17, 1862 (Stats. 1862, c. 37), authorizing any owner of any mine to sue for damages for improper mining by one in possession under a lease and for trespass to his mine, and providing for an application for an order for a survey of mines, and declaring that the costs of the order and survey shall be paid by the persons making the application unless they shall subsequently maintain an action and recover damages by reason of a trespass threatened prior to such survey, does not permit a survey of the boundaries and underground workings of adjacent mines unless there is a pending suit involving such mines. *National M. Co. v. District Court*, 34 Nev. 67; 116 P. 996.

5. Uniformity of operation of general laws—Subject-matter.

The provision in the act of February 20, 1913 (Stats. 1913, c. 10), amending section 22 of the marriage and divorce act of 1861 (Stats. 1861, c. 33), as amended in 1875 (Stats. 1875, c. 22), by declaring that when, at the time of the accrual of a cause for divorce, the parties shall not both be bona-fide residents of the state, no court shall grant divorce, unless either party shall have been a bona-fide resident for not less than one year next preceding the commencement of the action, is of general uniform operation throughout the state, and applies the same in every part of the state, and to all persons under similar circumstances, and is not a local or special law within Const. art. 4, sec. 20, prohibiting any local or special law granting a divorce. *Worthington v. District Court*, 37 Nev. 213; 142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696.

6. Applicability of general law as affecting validity of special or local law.

An act of the legislature provided that after May 1, 1911, the county commissioners of Lyon County should remove the offices and archives and other movable property from Dayton to Yerington. The general act of 1877 (Stats. 1877, c. 84), provides for the removal of county-seats by the majority of

the voters at an election called on petition of three-fifths of the taxpayers who are electors. Section 21 of article 4 of the state constitution provides that in all cases enumerated in section 20, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform application throughout the state. Prior to the last general election the courthouse at Dayton was destroyed by fire. Held, that the special act was justified on the ground that an emergency existed, calling for prompt action. *Quille v. Strosnider*, 34 Nev. 9; 115 P. 177.

In locating a county-seat, it will depend upon the facts and circumstances of each case whether a special law is applicable. *Id.*

If a special act be passed for a particular case, the presumption of the applicability of the general law is overcome by the presumption in favor of the special act that the general act was not applicable in that case. *Id.*

7. Laws of special, local, or private nature.

Reasonable classifications in a legislative act are not prohibited by the constitution prohibiting the passage of local or special laws. *Worthington v. District Court*, 37 Nev. 213; 142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696.

8. Regulation of personal status, rights, and relations.

The constitution, prohibiting any special laws granting divorce, renders void any special act granting divorce, as divorces were granted by parliament and state legislatures prior to the constitutional provision. *Id.*

9. Establishment and regulation of schools.

The act approved March 22, 1913 (Stats. 1913, c. 157), authorizing the county of Elko to issue bonds for, and to construct and equip, a high-school building in the town of Wells, is not a special law violative of Const. art. 4, sec. 21, providing that where a general law can be made applicable, all laws shall be of general operation throughout the state. *Dotta v. Hesson*, 38 Nev. 1; 143 P. 305.

III. SUBJECTS AND TITLES OF ACTS

10. Expression in title of subject of act.

Notwithstanding Const. art. 4, sec. 17, providing that each law shall embrace but one subject and matters properly connected therewith, a statute may contain several provisions, provided they relate to the subject expressed in the title, or are properly connected therewith. *Worthington v. District Court*, 37 Nev. 212; 142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696.

11. Titles and provisions of acts relating to particular subjects—Civil remedies and proceedings.

The title of an act entitled "An act relating to marriage and divorce" is sufficient, within Const. art. 4, sec. 17, providing that each law shall embrace but one subject and matters properly connected therewith, to

justify provisions in the body of the act prescribing the length of residence required before parties may apply for a divorce. *Id.*

12. Titles and provisions of acts relating to particular subjects—Crimes and criminal prosecutions and punishments.

Stats. 1911, c. 133, secs. 217, 218 (Rev. Laws, 3457, 3458), making it unlawful to keep a house of ill-fame within 800 yards of a schoolhouse, etc., is not unconstitutional, under Const. art. 4, sec. 17, as embracing matter not covered by the title, "An act concerning public schools and repealing certain acts relating thereto." *Ex Parte Ah Pah*, 34 Nev. 283; 119 P. 770.

13. Titles and provisions of acts relating to particular subjects—State government and administration thereof.

Provisions in a general appropriation act for the support of the state government, providing for repeals or amendments of the existing general laws of the state, would be unconstitutional and void as contrary to the provisions of section 17 of article 4 of the constitution, and are not germane to the title. *Abel v. Eggers*, 36 Nev. 372; 136 P. 100.

14. Titles and provisions of acts relating to particular subjects—Counties, towns, and municipal corporations.

The act of March 13, 1903 (Stats. 1903, c. 78), secs. 6, 7 (Rev. Laws, 3831, 3832), authorizing county commissioners, in case of great necessity or emergency, to make a temporary loan, and requiring them at the next tax levy to make a levy for its payment, does not, in violation of Const. art. 14, sec. 17, relate to a subject not embraced in the title, "An act relating to county government and the reduction of the rate of county taxation." *First Nat. Bank v. Nye Co.*, 38 Nev. 123; 145 P. 932; Ann. Cas. 1917C, 1195.

Stats. 1913, c. 111, entitled "An act relating to the compensation of injured workmen in the industries of this state and the compensation to their dependents where such injuries result in death, creating an industrial insurance commission, providing for the creating and disbursement of funds for the compensation and care of workmen injured in the course of employment, and defining and regulating the liability of employers to their employees, and repealing all acts and parts of acts in conflict with this act," sufficiently embraces within its title the purpose expressed by section 1, subd. b, thereof, making counties and other municipal corporations subject to the act, and therefore does not offend Const. art. 4, sec. 17, providing that every law shall embrace but one subject which shall be briefly expressed in its title. *Nevada Ind. Com. v. Washoe Co.*, 41 Nev. 437; 171 P. 511.

15. Titles and provisions of acts relating to particular subjects—Schools and school districts.

Stats. 1911, c. 133, entitled "An act concerning public schools," section 135 of which

provided for a tax for the support of the public schools, was not void for embracing a subject not included in the title, contrary to Const. art. 4, sec. 17 (Rev. Laws, 275). *State v. Esser*, 35 Nev. 429; 129 P. 557.

16. Titles and provisions of acts relating to particular subjects—Public officers.

Under Const. art. 4, sec. 17, providing that each law enacted shall embrace but one subject, which shall be briefly expressed in the title, Rev. Laws, 1513, which is section 13 of an act entitled "An act to create a board of county commissioners in the several counties of the state, and to define their duties and powers," and establishing the duties of boards of county commissioners as election officers, was constitutional. *McBride v. Griswold*, 38 Nev. 56; 146 P. 756.

The title to Stats. 1908-09, c. 200, relates to only the one subject of removal of officers, although it provides several independent methods for removing them. *Gay v. District Court*, 41 Nev. 330; 171 P. 156.

The act of March 29, 1915 (Stats. 1915, c. 283), entitled "An act regulating the nomination of candidates by political parties, providing for the holding of primaries and conventions, and regulating the manner of nominating candidates by petition," does not contravene the constitution, art. 4, sec. 17, providing that each law shall embrace but one subject and matters properly connected therewith, which subject shall be embraced in the title. *Turner v. Fogg*, 39 Nev. 406; 159 P. 56.

IV. AMENDMENT, REVISION, AND CODIFICATION

17. Title of amending act.

An amendment of a city charter was not invalid because the title of the act purported to amend an act theretofore repealed. *Ex Parte Counts*, 39 Nev. 61; 153 P. 93.

18. Reference to and identification of act amended.

The intention of the legislature to amend a specified section of the statute must govern, and a clerical mistake as to the section amended must be disregarded. *Worthington v. District Court*, 37 Nev. 213; 142 P. 230; *Ann. Cas.* 1916E, 1097; *L. R. A.* 1916A, 696.

The provision of Const. art. 4, sec. 17, that no law shall be revised or amended by reference to its title only, does not render invalid the provision of Stats. 1917, c. 197, that electors in the military service of the United States may vote in accordance with Stats. 1899, c. 94, which was repealed by Stats. 1913, c. 284; revival by title not being prohibited; for an "amendment" is an alteration effecting a change in the draft, or form, or substance, of a law already enacted, or of a bill proposed for enactment, but, when the legislative body attempts to revise, it thereby assumes to make additions or changes or corrections to alter or reform something then in force

and effect, and "revision" in a legislative sense applies only to a measure, bill, or law then having existence, life, and force, and cannot, in the nature of things, apply to a nullified or repealed act; and the term "revive," as applied to legislative proceedings, signifies the reconference of validity, force, and effect, at least the reconference of validity, force, and effect as the revived measure, law, or bill formerly possessed. *Maclean v. Brodigan*, 41 Nev. 468; 172 P. 375.

19. Setting forth provision as altered or amended.

By direct provision of Const. art. 4, sec. 17, the legislature cannot amend an act by reference to its title only, but must reenact and publish at length the act as revised or amended. *State v. Cole*, 38 Nev. 488; 151 P. 944.

Rev. Laws, 1912, p. 1283, entitled "An act making the railroad commission * * * ex officio a public service commission for the regulation and control of certain public utilities," etc., in section 16 provides that the commission shall have authority to employ an expert engineer at a salary of \$3,600 per annum and traveling expenses. Relator was so employed, but after the enactment of Stats. 1913, c. 261, entitled "An act regulating the salaries of certain state officers," and providing that the annual salary of the chief engineer of the public service commission shall be \$2,500, the state controller refused to draw his warrant in relator's favor at the rate of \$3,600 a year, but only at the rate of \$2,500. Relator sought mandamus, contending that the act of 1913, as an act amending the public service act, violated Const. art. 4, sec. 17, providing that each law enacted by the legislature shall embrace but one subject and matter properly connected therewith, which shall be briefly expressed in the title, and that no law shall be revised or amended by reference to its title only, but in such case the act as revised or section as amended shall be reenacted and published at length. Held, that the act of 1913 was valid, it not purporting to be an amendatory act, but clearly an independent act complete in itself, which was not embraced in the constitutional requirement and might alter the prior statute without referring to it. *Id.*

The act of February 15, 1875 (Stats. 1875, c. 22), entitled "An act to amend an act entitled 'An act relating to marriage and divorce,' approved November 28, 1861," and containing only three sections, purports, by section 1, to amend section 22 of the original act by reenacting the section as changed. Sections 2 and 3 are the ordinary repeal of inconsistent laws, and a provision as to when it shall take effect. The act of February 20, 1913 (Stats. 1913, c. 10), entitled "An act to amend an act entitled 'An act to amend an act relating to marriage and divorce,' approved November 28, 1861," purports to amend "section 22" by reenacting

It with the changes effected by the amendment and repealing conflicting acts. Held, that, in view of Const. art. 4, sec. 19, providing that no law shall be revised or amended by reference, but the act or section as amended shall be reenacted and published, the act of 1875 did not repeal section 22 of the original act, and the act of 1913 was not void as attempting to amend section 22, after such repeal, but the unchanged part of the section as originally enacted continued in force, notwithstanding the amendments, so that the title of the act of 1913 is sufficient. *Worthington v. District Court*, 37 Nev. 212; 142 P. 230; Ann. Cas. 1916E, 1097; L. R. A. 1916A, 696.

V. REPEAL, SUSPENSION, EXPIRATION AND REVIVAL

20. Implied repeal.

Repeals by implication are not favored. *State v. Ducker*, 35 Nev. 214; 127 P. 990.

Repeals by implication are not favored and occur only where there is such an irreconcilable repugnancy that the two acts cannot stand together. *Abel v. Eggers*, 36 Nev. 372; 136 P. 100.

Repeals of statutes by implication are not favored. *Dotta v. Hesson*, 38 Nev. 1; 143 P. 305.

In the absence of a clear showing, the repeal or modification of a statute is not presumed, and, when there is a general and special statutory provision relating to the same subject, the special provision will control. *State v. Boerlin*, 38 Nev. 39; 144 P. 738.

21. Implied repeal by inconsistent or repugnant act.

If two statutes are irreconcilably conflicting, the last enacted controls. *State v. Esser*, 35 Nev. 429; 129 P. 557.

22. Implied repeal by act relating to same subject.

Where the language of a statute is susceptible of two constructions, that construction should be applied which will make it effective. *Abel v. Eggers*, 36 Nev. 373; 136 P. 100.

Statutes relating to the same subject-matter will, if possible, be so construed as to give effect to both. *Id.*

23. Reenactment or revival of act repealed.

Where one act of the legislature specifically adopts the provisions of another act upon the same general subject, the effect is to incorporate the adopted act, making it effective for the designated purpose, and that the adopted act has been repealed is immaterial. *Maclean v. Brodigan*, 41 Nev. 468; 172 P. 375.

VI. CONSTRUCTION AND OPERATION

(A) GENERAL RULES OF CONSTRUCTION

24. Intention of legislature.

The intention of the legislature, when not in conflict with the constitution, is to gov-

ern in the construction of statutes. *State v. Boerlin*, 38 Nev. 39; 144 P. 738.

The legislative intent in enacting statutes must control, and rules of construction are but aids in ascertaining such intent. *State v. Ducker*, 35 Nev. 214; 127 P. 990.

The legislative intent in enacting a statute must govern if ascertainable. *Mighels v. Eggers*, 36 Nev. 364; 136 P. 104.

In the construction of statutes, the intention of the legislature controls the courts, and should be ascertained and followed. *Ex Parte Smith*, 33 Nev. 466; 111 P. 930.

The intention of the legislature controls the courts in the construction of statutes, and such intention must be gathered from the language used and from the mischiefs intended to be suppressed or benefits to be attained. *State v. Hamilton*, 33 Nev. 418; 111 P. 1026.

Courts in interpreting statutes will so construe them as to carry out the manifest purpose of the legislature, even though it may be necessary to disregard the literal meaning of certain of the language used. *Abel v. Eggers*, 36 Nev. 373; 136 P. 100.

In construing a statute the court must avoid an interpretation which will result in absurd consequences. *Nye County v. Schmidt*, 39 Nev. 456; 157 P. 1073.

25. Intention of legislature—Policy and purpose of act.

In construing or applying the provisions of any statute, the purpose or object of the statute should ever be kept in mind, and a construction or application should be avoided which sacrifices substance to a mere matter of form. *Ferro v. Bargo M. Co.*, 37 Nev. 139; 140 P. 527.

In the construction of statutes, courts may consider the purpose of the change sought to be effected as it may be deduced from a consideration of the whole subject-matter. *State v. Brodigan*, 37 Nev. 245; 141 P. 988.

26. Meaning of language.

In construing a statute, words shall be given their plain meaning, unless to do so would clearly violate evident spirit of act. *Ex Parte Zwissig*, 42 Nev. 360; 178 P. 20.

27. Meaning of language—Existence of ambiguity.

The unambiguous language of a statute cannot be construed contrary to its clear meaning. *Eddy v. Board of Embalmers*, 40 Nev. 329; 163 P. 245.

28. Meaning of language—Technical terms.

Technical words and phrases having peculiar and appropriate meaning in law are to be understood according to their technical import; but to such rule there is an exception where words are used to express convertible terms in a statute, and where a court, seeking to carry out the legislative will, applied to the terms the

meaning that will give the most unrestricted scope to the enactment. In *Re Estate of Lewis*, 39 Nev. 446; 159 P. 961.

29. Meaning of language—General and specific words.

One section of a statute treating specifically of a matter will prevail over other sections in which incidental or general reference is made to the same matter. *State v. Hamilton*, 33 Nev. 418; 111 P. 1026.

30. Meaning of language—Particular words and phrases.

The word "maintain" in a statute in reference to actions comprehends the institution as well as the support of the action, though it may be used to express a meaning corresponding to its more restricted definition. *National M. Co. v. District Court*, 34 Nev. 67; 116 P. 996.

31. Meaning of language—Mistakes in writing, grammar, spelling or punctuation.

In construing statutes rendered uncertain by punctuation, the courts properly regard such marks only as an aid in arriving at the correct meaning of the words of a statute, not as having a controlling influence; and courts should not hesitate to repunctuate a statute where it is necessary to arrive at the true legislative intent or where punctuation or omission thereof is caused by clerical error or inadvertence, or where it is evident that the punctuation gives to the statute an absurd or meaningless interpretation. *State v. Brodigan*, 34 Nev. 486; 125 P. 699.

32. Meaning of language—Words omitted.

Stats. 1913, c. 144, sec. 1, divided the state into ten judicial districts and provided that for each of them judges should be elected at the general election in 1914, and, as compiled, that "for each of said districts except the Second judicial district there shall be [elected one judge. For the Second judicial district there shall be] two judges elected"—the words in brackets being omitted from the enrolled bill. Section 3 fixed the salary of the judges in the different districts, referring to "the judge" of different districts mentioned, and section 4 provided that the Second judicial district should have two district judges, with concurrent jurisdiction and power to make rules and regulations for the transaction of business in that district. Held, that the manifest intent was to provide for the election of but one judge in other than the Second district; and hence that the words in brackets, necessary to give it that effect, would be read into the act in order that it might express the true legislative intent. *State v. Brodigan*, 37 Nev. 245; 141 P. 988.

33. Statute as a whole and intrinsic aids to construction.

Legislative acts should be construed so as to make all parts thereof harmonious, if a reasonable construction can accomplish the result. *Nye Co. v. Schmidt*, 39 Nev. 456; 157 P. 1073.

The whole act should be construed together to remove or explain any ambiguity in a particular statute. *Mighels v. Eggers*, 36 Nev. 364; 136 P. 104.

34. Statute as a whole and intrinsic aids to construction—Giving effect to entire statute.

Instead of construing one section of an act as repealing another section in part, courts rather seek to harmonize the different parts of the act, or different acts in pari materia, so as to enable them all to stand. *Verdi Lumber Co. v. Bartlett*, 40 Nev. 317; 161 P. 933.

Courts have no authority to eliminate language used in a statute or to change its obvious meaning, but are bound to give effect, where possible, to all the language used. *Heywood v. Nye County*, 36 Nev. 568; 137 P. 515.

A statute should be so construed, if possible, as to give it effect rather than to nullify it. *Id.*

Statutes should be construed so that, as far as possible, effect may be given to all the language of an act. *Ex Parte Smith*, 33 Nev. 466; 111 P. 930.

The presumption that the framers of an act intended not only to give effect to the main legislative intent, but also to its several parts, words, clauses, and sentences, is removed only when it appears that effect cannot be given to the paramount purpose unless particular words or clauses are rejected or without limiting or expanding their literal import. *State v. Reno Brewing Co.*, 42 Nev. 397; 178 P. 902.

The presumption is that the framers of an act intended to give force and effect not only to the main legislative intent, but also to its several parts, words, clauses, and sentences. *Id.*

35. Statute as a whole and intrinsic aids to construction—Conflicting provisions.

When two provisions of a statute are not reconcilable, the last one controls, as being the latest expression of the legislative will. *Ex Parte Smith*, 33 Nev. 466; 111 P. 930.

In the construction of statutes, a special provision will control as against a general one. *Ex Parte Smith*, 33 Nev. 466; 111 P. 930.

In the construction of statutes, courts should harmonize inconsistent parts of acts bearing upon the same question when it is possible to arrive at the true legislative intent thereby, and should avoid a construction which creates inconsistent positions whenever it can possibly be done without doing violence to the legislative intent. *State v. Brodigan*, 34 Nev. 486; 125 P. 699.

36. Statute as a whole and intrinsic aids to construction—Same or different language relating to same subject-matter.

Where the same word is used in different parts of a statute, it will be presumed to be used in the same sense throughout, and,

where its meaning in one instance is clear, such meaning will be attached to it elsewhere, unless it clearly appears that it was the intention of the legislature to use it in different senses. *National M. Co. v. District Court*, 34 Nev. 87; 116 P. 996.

37. Presumptions to aid construction.

In construing statutes courts must presume a legislative intentment of reasonable operation of all parts of the act. *Nye County v. Schmidt*, 39 Nev. 456; 157 P. 1073.

It will not be assumed that one part of a legislative act will make inoperative or nullify another part of the same act, if a different and more reasonable construction can be applied. *Id.*

Where the legislative body manifests a definite purpose in an act, it will be presumed that in furtherance of such purpose the lawmaking power formulated the subsidiary provisions in harmony therewith. *Id.*

Where a statute uses a word which is well known and has a definite sense at common law, without specific definition, it will be presumed to be used in its common-law sense, unless it clearly appears that it was not so intended. In *Re Estate of Lewis*, 39 Nev. 445; 159 P. 961.

Where a statute is equally susceptible of two constructions, the court will presume that the legislature did not intend a radical change in existing procedure, and will construe the statute in harmony therewith. *National M. Co. v. District Court*, 34 Nev. 67; 116 P. 996.

38. Extrinsic aids to construction.

The court, in construing an ambiguous statute, may consider the law as it existed prior to the statute. *Id.*

The court will not look beyond the enrolled bill in the office of the secretary of state to ascertain the terms of a law. *State v. Brodigan*, 37 Nev. 245; 141 P. 988.

39. Construction with reference to other statutes—Statutes relating to same subject-matter.

Two statutes relating to the same subject-matter are to be read and construed together, with a view to harmonizing them, if possible, to give effect to both, unless the later act expressly repeals the earlier, or is so repugnant to it as to repeal it by necessary implication; "repugnancy" being inconsistency or conflict with something else. *Presson v. Presson*, 38 Nev. 203; 147 P. 1081.

Two statutes on the same subject must be construed together, so as to give effect to the language of both, as far as consistent, and where a conflict is apparent, the later statute controls. *State v. Tax Commission*, 38 Nev. 112; 145 P. 905.

Separate acts covering the same subject-matter should be so construed, if possible, as to allow both to stand, where the language is consistent and plain. *Ex Parte Ah Pah*, 34 Nev. 283; 119 P. 770.

Statutes which relate to the same subject-matter are in *pari materia* and should be construed together. *State v. Esser*, 35 Nev. 429; 129 P. 557.

In the construction of statutes, courts may consider prior existing law upon the subject under consideration. *State v. Brodigan*, 37 Nev. 245; 141 P. 988.

General appropriation bills, as indicated by their titles, are passed for the support of the state government as the same is established by the constitution and general laws, and, as the life of such acts is limited to two years, it is not to be assumed that the legislature intended by such appropriation acts to accomplish changes or amendments in the general laws of the state. *Abel v. Eggers*, 36 Nev. 372; 136 P. 100.

The provisions in general appropriation acts are in *pari materia* with the general acts controlling the purposes for which the appropriation is made and are to be construed in connection therewith. Unless there is such a manifest repugnance as to leave no room for reasonable construction otherwise, they will be construed so as to carry out the provisions of the general law. *Id.*

40. Construction of statutes adopted from other states.

Where the legislature of one state adopts the statute of another, the act of adoption raises the presumption that the legislature of the adopting state enacted the statute in the light of the construction that had been placed upon it in the parent state. *O'Brien v. Commissioners*, 41 Nev. 91; 167 P. 1007.

As the groundwork of the civil practice act of this state was the code of civil procedure of the State of New York, decisions of New York courts construing their procedure are especially in point in construing similar provisions of the practice act in this state. *Ex Parte Boyd*, 36 Nev. 162; 134 P. 455; *Ann. Cas.* 1915A, 1277.

Courts of a state which have adopted a statute from another state, after it has been construed by the courts of that state, are not bound by such construction, where the organic laws of the two states differ in essential particulars affecting the law in question, or where the laws are not identical, or where the circumstances of the people of the adopting state are essentially different. Held, also, that the Nevada water law of 1913 differs in essential particulars from the water laws of Wyoming and Nebraska, and that the constitutions of those states also differ in material particulars, hence, this court is not bound by the decisions of the highest courts of those states construing the provisions of their water laws. *Ormsby County v. Kearney*, 37 Nev. 316; 142 P. 803.

Where the legislature of one state adopts a statute already in force in another state, it is presumed that the construction given

such statute is also adopted. *Johnson v. Garner*, 233 F. 756.

41. Construction as mandatory or directory.

Where an existing right or privilege is subject to regulation by a statute in negative words, the mode so prescribed is imperative. *Walser v. Moran*, 42 Nev. 111; 173 P. 1149; 180 P. 492.

(B) PARTICULAR CLASSES OF STATUTES

42. Penal statutes.

Penal statutes must be liberally construed in favor of the accused, and it must appear that he committed acts which are clearly made an offense by the statute. *Ex Parte Smith*, 33 Nev. 486; 111 P. 930.

Penalties and forfeitures are not favored, and will not be imposed unless the statute so clearly directs. *State v. Brodigan*, 37 Nev. 488; 143 P. 306.

Penalties or forfeitures in addition to those stated in a statute should not be implied or imposed by the court. *U. S. F. & G. Co. v. Marks*, 37 Nev. 306; 142 P. 524.

(C) TIME OF TAKING EFFECT

43. Date fixed in act.

Crimes and punishments act, effective January 1, 1912, prohibiting the keeping of a house of ill-fame within 400 yards of a school, etc. (Rev. Laws, 6510), did not, until January 1, 1912, supersede Stats. 1911, c. 133, secs. 217, 218, enacted the same day as the other act, and fixing an 800-yard limit. *Ex Parte Ah Pah*, 34 Nev. 283; 119 P. 770.

In the absence of constitutional restriction, the legislature is free to fix in each act the time it is to take effect. *Id.*

See Appeal and Error, 9; Constitutional Law, 17, 25; Counties, 1; Schools and School Districts, 5; States, 6; Taxation, 1.

STATUTORY AUTHORITY

See Pleading, 1.

STATUTORY CONSTRUCTION

See Action, 2; Attorney-General, 1; Intoxicating Liquors, 4; Officers, 5, 6; Process, 4; States, 7; Statutes.

STATUTORY PROCEDURE

See Stipulations, 1.

STATUTORY PROVISIONS

See Justices of the Peace, 9.

STATUTORY REQUIREMENTS

See Executors and Administrators, 3.

STATUTORY RESTRICTIONS

See Prohibition, 7.

STAY OF EXECUTION

See Attachment, 4.

STAY OF PROCEEDINGS

See Insane Persons, 1.

STIPULATION FOR ARBITRATION

See Arbitration and Award, 1.

STIPULATIONS

1. Validity of provisions.

1. Validity of provisions.

Stipulation, between parties to proceeding by divorced wife against deceased husband's executors to modify original judgment of divorce as to payment of sums for alimony and child support, that proceeding should be determined and considered as suit against estate of husband on claim that had been rejected, will not be given effect, where to do so would be to nullify express mandate of statute with reference to adjudication of claims against estates of deceased persons; claim in fact having been neither approved nor rejected. *Sweeney v. Sweeney*, 42 Nev. 432; 179 P. 638.

STOCK OF MERCHANDISE

See Fraudulent Conveyances, 1.

STOCK TRANSFER

See Trover and Conversion, 2.

STREET RAILROADS

II. REGULATION AND OPERATION.

1. Acts of employees for which company is liable.
2. Injury to persons on or near tracks—Drivers of vehicles and persons therein.
3. Injury avoidable notwithstanding contributory negligence.
4. Actions for injuries—Questions for jury.

II. REGULATION AND OPERATION

1. Acts of employees for which company is liable.

A motorman operating defendant street-railroad company's car was a servant of such company, whose negligence in the scope of his duties was imputable to defendant. *Weck v. Reno Traction Co.*, 38 Nev. 286; 149 P. 65.

2. Injury to persons on or near tracks—Drivers of vehicles and persons therein.

The duty which rests upon one about to cross the track of a steam railroad to look and listen does not rest upon one about to cross that of a street railroad, owing to the different conditions; the question of negligence of both parties in case of a collision between a street car and one lawfully using the street being of fact to be determined

upon all the circumstances. *Weck v. Reno Traction Co.*, 38 Nev. 285; 149 P. 65.

One who finds himself in a perilous position on a street-car track is not required to exercise the soundest judgment under penalty of being found guilty of contributory negligence. *Id.*

3. Injury avoidable notwithstanding contributory negligence.

Where plaintiff, in his automobile, in turning from the side of the road around obstructing vehicles onto the street-car track, discovered a car coming toward him at an excessive speed, and exercised reasonably good judgment in trying to extricate himself from danger, his negligence in going upon the track, if any, stopped at such point, and having stopped, and not continued until the moment of the accident, defendant's negligence in running the car at an excessive speed was the proximate cause of the injury to plaintiff's automobile by the collision, under the doctrine of last clear chance. *Id.*

4. Actions for injuries—Questions for jury.

In an action against a street railroad for injuries sustained by an automobile in collision with one of its cars, evidence held to take case to jury. *Id.*

STREETS AND ALLEYS

See Dedication, 1-6.

STRIKING ASSIGNMENT OF ERRORS

See Appeal and Error, 18.

STRIKING COMPLAINT

See Depositions, 2.

STRIKING COST BILL

See Costs, 6.

SUBJECTS AND TITLES

See Statutes, 14, 16.

SUBROGATION

1. Persons making advances for discharge of debt or incumbrance.

1. Persons making advances for discharge of debt or incumbrance.

Where a guardian executed a mortgage upon land owned by herself and her minor ward to obtain money to prevent foreclosure under another mortgage running to a third party, the mortgagee was subrogated to the rights of the original mortgagee, where his mortgage was invalid, and the fact that he had no previous interest in the property did not make him a volunteer or intermeddler, a volunteer and intermeddler being a person who thrusts himself into a situation on his own initiative, and not one who becomes a party to a transaction upon

the urgent petition of a person who is vitally interested therein and whose rights would otherwise be sacrificed. *Laffranchini v. Clark*, 39 Nev. 48; 153 P. 250.

See Bankruptcy, 7.

SUBSTANTIAL COMPLIANCE WITH STATUTE

See Grand Jury, 3.

SUBSTANTIAL CONFLICT

See Appeal and Error, 110; Criminal Law, 117.

SUBSTANTIAL EVIDENCE

See Appeal and Error, 103, 109, 110.

SUBSTANTIAL EVIDENCE IN SUPPORT OF FINDING

See Appeal and Error, 109.

SUBSTANTIAL EVIDENCE TO SUSTAIN

See Appeal and Error, 109.

SUBSTANTIAL RIGHTS

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SUBSTITUTED SERVICE

See Judgment, 33.

SUFFICIENCY

See Pleading, 5, 11.

SUFFICIENCY OF AFFIDAVIT FOR PUBLICATION OF SUMMONS

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SUFFICIENCY OF CLAIM FOR AFFIRMATIVE RELIEF

See Pleading, 11.

SUFFICIENCY OF COMPLAINT

See Divorce, 17.

SUFFICIENCY OF DEMURRER

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SUFFICIENCY OF DESCRIPTION

See Vendor and Purchaser, 1.

SUFFICIENCY OF EVIDENCE

See Appeal and Error, 82; Attorney and Client, 3; Criminal Law, 117; Easements, 2; Estoppel, 8; Gifts, 1; Principal and Agent, 6.

**SUFFICIENCY OF EVIDENCE OF
ACQUIESCENCE**

See Landlord and Tenant, 7.

SUFFICIENCY OF NOTICE

See Mines and Minerals, 27.

**SUFFICIENCY OF NOTICE OF
APPEAL**

See Criminal Law, 18.

SUFFICIENCY OF OBJECTION

See Appeal and Error, 20.

**SUFFICIENCY OF PERFORMANCE
OF CONDITION**

See Charities, 3.

SUFFICIENCY OF RECORD

See Justices of the Peace, 3.

**SUFFICIENCY OF REQUISITION
PAPERS**

See Habeas Corpus, 13.

SUFFICIENCY OF STATUTE

See States, 6.

SUFFICIENCY OF TITLE

See Statutes, 14.

SUFFICIENCY OF TRANSCRIPT

See Appeal and Error, 94.

SUFFICIENT TENDER

See Vendor and Purchaser, 7.

SUIT MONEY

See Divorce, 19, 24.

SUIT TO FORECLOSE MORTGAGE

See Limitation of Actions, 12.

"SUM INVOLVED"

See Justices of the Peace, 2.

SUMMARY REMOVAL

See Habeas Corpus, 2.

SUMMARY TRIAL

See Constitutional Law, 47.

SUMMONS

See Justices of the Peace, 5; Process, 4, 6.

SUNDAY

1. Judicial and official acts and proceedings.

1. Judicial and official acts and proceedings.

Under the power given the court by Rev. Laws, 4870, subd. 2, to sit on Sunday to receive a verdict, the court is necessarily authorized to remand a defendant and fix a date for further proceedings. *State v. Kuhl*, 42 Nev. 185; 175 P. 190.

SUNDAYS

See Time, 1.

SUNSET AND SUNRISE

See Criminal Law, 105.

SUPPORT IN FACTS

See Judgment, 2.

**SUPPRESSING NONINTOXICAT-
ING LIQUORS**

See Intoxicating Liquors, 1.

SUPREME COURT

See Appeal and Error, 74; Criminal Law, 80.

SUPREME COURT RULE

See Costs, 13.

SUPREME COURT RULES

See Appeal and Error, 65.

**SUPREME COURT, UNITED
STATES**

See Courts, 9.

SURCHARGING ADMINISTRATOR

See Executors and Administrators, 4, 5.

SURETIES

See Executors and Administrators, 12; Justices of the Peace, 12.

SURETY FOR EXECUTOR

See Judgment, 14.

SURETY ON GUARDIAN'S BOND

See Executors and Administrators, 8.

SURPLUS WATERS

See Waters and Watercourses, 2, 8.

SURPRISE

See Appeal and Error, 57.

SURRENDER

See Habeas Corpus, 2.

SURRENDER OF LEASE

See Landlord and Tenant, 5.

SURRENDER OF PREMISES

See Landlord and Tenant, 7.

SURVEYOR-GENERAL (U. S.)

See Mines and Mineral, 16.

SURVEYS

See Mines and Minerals, 15, 16, 17.

SURVIVAL OF ACTIONS

See Abatement and Revival, 1, 2.

TAX

See Licenses, 1, 2.

TAX COMMISSION

See Mandamus, 16, 18.

TAX SALE

See Courts, 9; Taxation, 19.

TAX TITLE

See Limitation of Actions, 7; Mortgages, 3.

TAXATION**II. CONSTITUTIONAL REQUIREMENTS AND RESTRICTIONS.****1. Equality and uniformity.****III. LIABILITY OF PERSONS AND PROPERTY.****(A) Private Persons and Property.****2. Nature of property—Mines, mining rights, and minerals.****(B) Corporations and Corporate Stock and Property.****3. Express and other transportation companies.****IV. PLACE OF TAXATION.****4. Corporations and corporate property, franchises, and capital.****V. LEVY AND ASSESSMENT.****(B) Assessors and Proceedings for Assessment.****5. Powers and proceedings in making assessments.****(C) Mode of Assessment.****6. Valuation.****7. Valuation—Real property.****8. Notice of assessment.****(D) Mode of Assessment of Corporate Stock, Property or Receipts.****9. Valuation of franchises and privileges.****10. Express and other transportation companies.****11. Foreign corporations.****(E) Assessment Rolls or Books.****12. Description of property—Corporate property, stock and securities.****V. LEVY AND ASSESSMENT—Contd.****(F) Equalization of Assessments.****13. State boards of equalization.****14. Equalization among counties or other municipalities by state board or officer.****(G) Review, Correction or Setting Aside of Assessment.****15. Proceedings by and before board or officer—Conclusiveness and effect of decision.****VII. PAYMENT AND REFUNDING OR RECOVERY OF TAX PAID.****16. Right of recovery of taxes paid—Protest.****VIII. COLLECTION AND ENFORCEMENT AGAINST PERSONS OR PERSONAL PROPERTY.****(B) Summary Remedies and Actions.****17. Actions for unpaid taxes—Evidence.****(C) Remedies for Wrongful Enforcement.****18. Injunction—Grounds of relief.****IX. SALE OF LAND FOR NONPAYMENT OF TAX.****19. Taxes and charges for which land may be sold—Validity of tax.****XIII. LEGACY, INHERITANCE, AND TRANSFER TAXES.****20. Property liable—Particular estates or interests.****XIV. DISPOSITION OF TAXES COLLECTED, AND FAILURE OF LOCAL AUTHORITIES TO COLLECT.****21. General taxes collected by county, city, or other municipality—Rights of state.****22. Proceedings for apportionment, accounting, and settlement.****II. CONSTITUTIONAL REQUIREMENTS AND RESTRICTIONS****1. Equality and uniformity.**

A basic principle of all property taxation is that it shall be uniform and equal regardless of the method adopted to arrive at the result. *Goldfield Con. M. Co. v. State*, 35 Nev. 178; 127 P. 77.

Stats. 1911, c. 133, sec. 135 (Rev. Laws, 3374), imposing a tax on all taxable property in the state for school purposes, and requiring the county commissioners to add such amount to the other taxes, could take effect during the fiscal year 1911, without violating the constitutional requirement of equality and uniformity, though it resulted in two different levies during the same fiscal year. *State v. Esser*, 35 Nev. 429; 129 P. 557.

III. LIABILITY OF PERSONS AND PROPERTY**(A) PRIVATE PERSONS AND PROPERTY****2. Nature of property—Mines, mining rights and minerals.**

Article 10 of the constitution, as amended and ratified at the general election in 1906,

provides (section 1) that the legislature shall provide for uniform and equal taxation and for a just valuation for taxation of all property, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed; and, when patented, each patented mine shall be assessed at not less than \$500, except when \$100 in labor has been actually performed thereon during the year, in addition to the tax on the net proceeds, etc. Rev. Laws, 3621, provides that all property within the state shall be subject to taxation, except: "Second—Unpatented mines and mining claims; provided," etc. Held, that where \$100 worth or more of labor has been expended on a patented mining claim during any one year and prior to the time of assessment, the mine is exempt from taxation, except on the proceeds thereof. *Goldfield Con. M. Co. v. State*, 35 Nev. 178; 127 P. 77.

(B) CORPORATIONS AND CORPORATE STOCK AND PROPERTY

3. Express and other transportation companies.

Where the statutes define the different species of property subject to taxation and provide that every species shall be assessed at its actual cash value, but are silent as to the mode of ascertaining the cash value, the revenue officers may assess the intangible property of an express company as against the objection that the legislature has failed to adopt any rule governing the manner of determining the value of the property. *State v. Wells Fargo & Co.*, 38 Nev. 505; 150 P. 836.

Const. art. 10 (as amended by Stats. 1913, c. 83), requiring the legislature to provide by law for a uniform and equal rate of assessment and taxation and exempt from taxation enumerated property, and Rev. Laws, 3621, 3622, declaring that all property shall be subject to taxation, except exempt property, defining real estate, and declaring that the term "personal property" shall include all capital, loaned, invested, or employed in trade, commerce or business, the capital stock of corporations doing business within the state, and all property not included in the term "real estate," authorize and direct that all property of every kind, character, and nature not specifically exempted shall be subject to taxation, and authorize a tax on the intangible property of an express company engaged in interstate and intrastate business. *Id.*

IV. PLACE OF TAXATION

4. Corporations and corporate property, franchises, and capital.

The property of an express company doing an interstate and an intrastate business is in character tangible and intangible, and the property is subject to assessment and taxation, and the situs of the intangible property is distributed where its tangible property is located and its work done. *Id.*

V. LEVY AND ASSESSMENT

(B) ASSESSORS AND PROCEEDINGS FOR ASSESSMENT

5. Powers and proceedings in making assessments.

In the absence of a showing to the contrary, it will be presumed that assessing officers performed their duty in making an assessment of property for taxation. *State v. Wells Fargo & Co.*, 38 Nev. 506; 150 P. 836.

(C) MODE OF ASSESSMENT

6. Valuation.

Where the valuation of property for taxation was not excessive, the fact that an erroneous method was used in good faith in determining the valuation was immaterial. *State v. Wells Fargo & Co.*, 38 Nev. 507; 150 P. 836.

7. Valuation—Real property.

Rev. Laws, 3624, directing the assessor to determine the true cash value of the property, does not control section 3838, subsequently enacted, which provides that no patented or state contract land shall be assessed for less than \$1.25 per acre. *State v. Tax Commission*, 38 Nev. 112; 154 P. 905.

Stats. 1913, c. 134, creating a state tax commission with power to district the state geographically in assessment districts according to relative uniformity of land valuation, and establish minimum acreage valuations for the classes in each district, and that if, in the opinion of the commission, any tract, by reason of special conditions, would be improperly assessed by the application of the classified acreage valuations, the tract may be excluded therefrom and specially appraised, and providing that property shall be assessed at its true full "cash value," defined to mean the valuation in money which an investor in such character of property would be reasonably willing to pay therefor, implies that the commission may fix the valuation lower than the minimum of \$1.25 per acre, as fixed by Rev. Laws, 3838, and an owner feeling aggrieved on the ground that the minimum is too high, may appear before the commission and prove that the cash valuation is less than the minimum, and, on the commission so finding, they must make a deduction in the valuation accordingly, and to this extent section 3838 is superseded, but it still applies to county assessors making the original assessment. *Id.*

Under Const. art. 10, sec. 1, as amended in 1906 (Stats. 1907, p. 501), to provide that, as to unpatented mines and mining claims, the proceeds alone should be assessed and taxed, and that patented claims shall be assessed at not less than \$500, except when \$100 in labor has been actually performed thereon during the year, in addition to the tax upon the net proceeds, a patented mine cannot be assessed at less than \$500 if no labor has been performed, and a

patented mine on which labor has been performed is exempt from taxation except on the proceeds thereof, and, in the absence of any saving clause, an assessment at \$10 per acre under Stats. 1905, c. 58, pursuant to article 10, section 1, prior to the amendment of 1906, was invalid. *Wren v. Dixon*, 40 Nev. 170; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

8. Notice of assessment.

Where a statute does not provide for notice of assessment of property for taxation, the giving of notice is not essential to make an assessment valid. *State v. Wells Fargo & Co.*, 38 Nev. 506; 150 P. 836.

(D) MODE OF ASSESSMENT OF CORPORATE STOCK, PROPERTY, OR RECEIPTS

9. Valuation of franchises and privileges.

A corporation, whose power plant and water rights were located in California, but the greater part of whose transmission lines were in Nevada, where most of the current was sold, cannot be taxed in Nevada on an assessed valuation in the ratio of its transmission lines in Nevada to its transmission lines in California, on the theory that that proportion of its income was derived from its property in Nevada, even though California has assessed its valuation only in the ratio of its California transmission lines to its total transmission lines. *Nev.-Cal. Power Co. v. Hamilton*, 240 F. 485.

A hydro-electric power company can be assessed on its franchise value, or on its value as a going concern, provided the value of the whole property, as determined by capitalizing its net earnings, is in excess of the sum of the values of its constituent units. Such a valuation may be obtained by subtracting the sum of the values of its several parts from its capitalized value. In determining what is a reasonable return on the property, the court should take into consideration the hazards of the business, taxes, operating expenses, and depreciation. No allowance can be made for depreciation in the case of water rights which are appreciating in value. *Id.*

10. Express and other transportation companies.

An express company was assessed at a mileage valuation of \$300 per mile on 140.14 miles of railroad, over which it transacted business in the state. The net operative earnings of the company were over \$3,000,000, which would be a 10 per cent net earnings on property of the value of over \$30,000,000. The operative mileage of the company was 65,474 miles, including nearly 15,000 miles of steamship lines. Excluding from a capitalization of the net earnings on a 10 per cent basis the value of all the property of the company outside the state used in its operative business, there would be net earnings of over \$40 per mile for

the entire system, or a valuation of over \$400 per mile for the system as a whole. Excluding the steamship mileage, and assuming that 8 per cent was a fair interest on which to estimate the value of its property, subject to assessment basis, a resulting valuation of over \$750 per operative mile would be shown. Held, that the assessment was not excessive, though the steamship mileage was not included. *State v. Wells Fargo & Co.*, 38 Nev. 507; 150 P. 836.

Rev. Laws, 3797, requiring county assessors to meet annually and establish a valuation through the state of property for taxation, when considered in connection with sections 3624, 3800, relating to the assessment of property at its actual cash value, does not delegate legislative power to the assessors acting collectively or severally in determining whether property is subject to taxation, but the only discretion conferred on the board of assessors is to determine whether other kinds of property than those enumerated by statute can be valued and assessed more uniformly by the board than by the county assessors acting separately, and the tangible and intangible property of an express company may be assessed. *State v. Wells Fargo & Co.*, 38 Nev. 506; 150 P. 836.

11. Foreign corporations.

In assessing the property of an interstate corporation, engaged in the sale of electric power and water, it is improper to capitalize the earnings of the whole property and ascribe the total value to the distributing lines as a mode of assessing such lines for taxation. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 318.

Complainant, whose power plant and water rights are located in California, owns transmission lines extending into southern Nevada, where the greater part of its electric current is sold. Though the more valuable part of plaintiff's property was located in California, that state taxed it on about 15 per cent of the value of its entire property. Held, that the State of Nevada could not, on the theory that practically 85 per cent of its income was derived from Nevada, tax plaintiff on a valuation made from capitalizing such income at 10 per cent, for, as the income necessarily resulted from current generated in California, the State of Nevada could not, though the State of California had not taxed plaintiff on all its property, impose taxes on property not located in Nevada. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 317.

The most valuable portion of complainant's property is permanently located in California, and 85 per cent of its transmission lines are in Nevada. If the value of the entire property for the purpose of taxation is ascertained by capitalizing its net earnings, and 85 per cent of this valuation is assessed as the value of the company's property in Nevada, simply because 85 per

cent of the company's transmission-line mileage is in Nevada, the assessment is bad. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 318.

Where an interstate corporation, as a carrier or irrigation company, owns property in several states, each state, for purposes of taxation, may value the entire property and impute a fair proportion of the aggregate value to that portion lying within its borders. *Id.*

(F) ASSESSMENT ROLLS OR BOOKS

12. Description of property—Corporate property, stock and securities.

The state board of assessors, at an annual meeting, fixed the mileage valuation on the property of an express company doing intrastate and interstate business, after considering the fact that interstate business was not subject to taxation. The county assessor, in fixing the assessment of the property of the company, described it as the right to carry express over railroad mileage operated by enumerated railroads, and stated that the company operated its business on 140.14 miles of railroad at a valuation for the business of \$300 per mile. The company had furnished a statement of its property, and the county assessor sought to assess the intangible property of the company. Held, that the assessment sufficiently described the property. *State v. Wells Fargo & Co.*, 38 Nev. 506; 150 P. 836.

(F) EQUALIZATION OF ASSESSMENTS

13. State boards of equalization.

The act of March 20, 1913 (Stats. 1913, c. 134), sec. 4, authorizing the state tax commission to exercise general supervision and control over the entire revenue system of the state, does not trespass upon any inherent right of county revenue officers; their duties being within the control of the legislature. *Tax Commission v. Douglas County*, 36 Nev. 319; 135 P. 609.

The act of March 20, 1913 (Stats. 1913, c. 134), sec. 3, requires the state tax commission to hold a regular session on the second Monday in October, at which session it shall equalize property valuations as provided in section 6. Section 4 provides that the commission shall have power to exercise general supervision and control over the entire revenue system of the state, in pursuance whereof it shall possess special power, among others, to require assessors, sheriffs, as ex officio collectors of licenses, and the clerks of county boards of equalization, to furnish such information in relation to assessments, licenses or the equalization of valuations as it may demand. Section 6 provides that at its regular session in October it shall review the tax rolls of the various counties, and may raise or lower, for the purpose of state equalization, the valuations therein. Held, that while there is no express provision requiring revenue officers of the several counties to deliver or transmit to the commission the assessment roll, where the commission determines that, for the performance of its

duties, it is convenient or necessary to have such rolls and makes demand therefor, it is the duty of the county revenue officers to comply with such demand. *Id.*

14. Equalization among counties or other municipalities by state boards or officers.

Stats. 1913, c. 134, creating the Nevada tax commission, and empowering it to exercise general supervision and control over the entire revenue system of the state, with special enumerated powers, including the power to advise and direct assessors, sheriffs, and county boards of equalization, and also providing that the enumeration of the special powers shall not exclude the commissioners of any needful and proper power, does not empower the commission to order a board of county commissioners to reduce its rate of county taxation after the commission has increased the valuation. *State v. Boerlin*, 38 Nev. 39; 144 P. 738.

(G) REVIEW, CORRECTION, OR SETTING ASIDE OF ASSESSMENT

15. Proceedings by and before board or officer—Conclusiveness and effect of decision.

An assessment imposed by the Nevada tax commission, created by act Nev. March 20, 1913, is conclusive, and has the effect of a judgment, in the absence of fraud. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 320.

VII. PAYMENT AND REFUNDING OR RECOVERY OF TAX PAID

16. Right of recovery of taxes paid—Protest.

Where an assessment of taxes on real property was not wholly void, but was excessive, the taxes, if paid, cannot be recovered in an action against the taxing officials, the payment, though made under protest, being presumed to be voluntary. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 318.

VIII. COLLECTION AND ENFORCEMENT AGAINST PERSONS OR PERSONAL PROPERTY

(B) SUMMARY REMEDIES AND ACTIONS

17. Actions for unpaid taxes—Evidence.

Under Rev. Laws, 3664, authorizing defendant, in an action for delinquent taxes, to show that the assessment is out of proportion and above the actual cash value of the property assessed, defendant, in an action for delinquent taxes, has the burden of establishing excessive valuation on his property. *State v. Wells Fargo & Co.*, 38 Nev. 506; 150 P. 836.

(C) REMEDIES FOR WRONGFUL ENFORCEMENT

18. Injunction—Grounds of relief.

Where taxing officials assess in a manner which they must know will produce inequalities and unjust assessments, their acts are to be treated as arbitrary or fraudulent. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 318.

Judicial code, sec. 267, declares that suits in equity shall not be sustained in any court in the United States where a plain, adequate, and complete remedy may be had at law. The property of plaintiff, a foreign corporation, which was located in Nevada, was assessed at an excessive rate. Rev. Laws Nev., sec. 3664, enumerating the defenses against tax suits, which enumerates fraud in the assessment, or failure to comply with the provisions of the act, provides that the defense that the assessment is out of proportion to the actual value of the property assessed shall be effectual only as to the excess. Held, that as a tax suit by the State of Nevada against plaintiff could not be removed by plaintiff to the federal court on the ground of diversity of citizenship, though plaintiff was a foreign corporation, as the defense against an excessive assessment, which could be interposed at law, was not available in the federal courts, and as a state cannot restrict the jurisdiction of the federal courts, the federal district court had jurisdiction to entertain a suit by plaintiff to enjoin enforcement of an excessive assessment; it having no plain and adequate remedy at law. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 320.

Act Nev. March 20, 1913 (Stats. 1913, c. 134) sec. 7, declares that any property owner who has instituted court proceedings for redress from any increased valuation of his property, and who shall have paid his December installment of taxes in full, on filing with the treasurer of the county a certificate of the clerk of any court that such issue is pending, pay his June installment in two separate payments, one payment in a sum which, when added to the December installment, will represent the amount of taxes payable if computed on the valuation of the preceding fiscal year, plus the valuation of any improvement, and the other for the balance required to make up the full June installment, which sum shall be held to be disposed of according to the result of the litigation. Plaintiff's assessment was so raised in 1914 that payment of the December installment would result in payment of a sum in excess of the taxes payable under the prior valuation; the taxes being payable in two equal installments. Held, that section 7 did not afford plaintiff an adequate remedy at law, and so plaintiff might, being a foreign corporation, sue in the federal courts to enjoin the collection of the illegal assessment. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 319.

Under Rev. Laws Nev., sec. 3666, making a tax deed conclusive evidence of title, except against actual fraud or payment of taxes by one not a party, enforcement of an illegal tax assessment, under which proceedings were about to be brought to sell land for taxes, will be enjoined, for a tax deed based on such proceedings would constitute a cloud on the title. *Nev.-Cal. Power Co. v. Hamilton*, 235 F. 318.

IX. SALE OF LAND FOR NONPAYMENT OF TAX

19. Taxes and charges for which land may be sold—Validity of tax.

Where an assessment on a patented mining claim at \$10 per acre under Stats. 1905, c. 58, expressly following Const. art. 10, sec. 1, as amended in 1902 (Stats. 1901, p. 136), was void under the amendment of that section in 1906 (Stats. 1907, p. 501), providing for an assessment of such claims at \$500, with certain exceptions as to labor performed, etc., the tax sale under the assessment was void. *Wren v. Dixon*, 40 Nev. 171; 161 P. 722; 167 P. 324; Ann. Cas. 1918D, 1064.

XIII. LEGACY, INHERITANCE, AND TRANSFER TAXES

20. Property liable—Particular estates or interests.

Under Rev. Laws, 2156, defining community property, and section 2165, providing that upon the death of the husband one-half of the community property goes to the surviving wife, the right of the wife in the community property during her husband's life is not a mere expectancy, but is a property interest, though subject to the husband's control, and at the husband's death it is merely freed from his control, and does not pass under the inheritance laws, and therefore is not subject to taxation under Stats. 1913, c. 266, sec. 1, imposing a tax on all property passing by will or statutes of inheritance. In *Re Williams*, 40 Nev. 241; 161 P. 741; L. R. A. 1917C, 602.

XIV. DISPOSITION OF TAXES COLLECTED, AND FAILURE OF LOCAL AUTHORITIES TO COLLECT

21. General taxes collected by county, city, or other municipality—Rights of state.

Rev. Laws, 3748, declares that the county auditors shall on the first Monday of each month furnish the controller a statement of all moneys in the respective county treasuries, that the treasurers shall always hold themselves ready to pay all moneys in their hands belonging to the state whenever required to do so by order of the state controller and state treasurer, and that on making payments into the state treasury the county treasurer shall furnish the controller with a statement. Stats. 1913, c. 134, sec. 7, declares that any property owner who has initiated a court proceeding for redress from any increased valuation, and who shall have paid his December installment of taxes, may pay his June installment in two payments, one payment in a sum which, when added to the December installment, shall represent the amount of taxes payable if computed on the old valuation, plus any improvements, and the other the balance of the full June installment, which sum shall be kept as a special deposit until the court by its findings shall award it, and from which, if the property owner be successful,

he shall be entitled to a refund. Taxpayers paid their taxes under protest, but did not commence any court action. Held, that they were entitled to relief only upon complying with the terms of the statute, and the county treasurer could not withhold settlement from the state treasurer on the ground that the taxes had been paid under protest. *State v. Miller*, 38 Nev. 494; 151 P. 943.

22. Proceedings for apportionment, accounting and settlement.

In an action by one county against another county for taxes collected by defendant county on property claimed to be in plaintiff county, evidence held to sustain a finding for plaintiff. *Lyon County v. Storey County*, 34 Nev. 243; 117 P. 827.

TAXES

See Schools and School Districts, 6.

TAXING WITNESS FEES

See Costs, 3.

TECHNICAL ERRORS

See Criminal Law, 117.

TECHNICAL WORDS

See Statutes, 28.

TENANCY IN COMMON

II. MUTUAL RIGHTS, DUTIES AND LIABILITIES OF COTENANTS.

1. Purchase of outstanding title or claim.

II. MUTUAL RIGHTS, DUTIES AND LIABILITIES OF COTENANTS

1. Purchase of outstanding title or claim.

One in possession of government land as cotenant of another cannot acquire a homestead right thereto so as to exclude his cotenant, but such title will inure to the benefit of both, upon the tenant who did not purchase contributing an equal part of the consideration actually paid. *Lytle v. Devlin*, 34 Nev. 179; 117 P. 15; Ann. Cas. 1914B, 852.

TENDER OF CONVEYANCE

See Vendor and Purchaser, 7.

TERMINAL EDGE

See Mines and Minerals, 13.

TERMINATION OF TRUST

See Limitation of Actions, 9, 10.

TERMS OF COURT

See Judgment, 18.

TESTAMENTARY CAPACITY

See Wills, 2, 3.

TESTATOR'S INTENTION

See Wills, 2, 3, 5.

TESTIMONY

See Depositions, 4; Evidence, 23, 25.

TESTIMONY OF ACCOMPLICE

See Criminal Law, 16.

TESTIMONY OF ACCUSED

See Criminal Law, 76.

TESTIMONY OF COCONSPIRATOR

See Criminal Law, 110.

TESTIMONY OF CONVICTS

See Criminal Law, 64, 111.

THEORIES OF CASE

See Trial, 16.

THIRD PARTIES

See Homestead, 2.

TIME

1. Days—Sunday or other nonjudicial day.

1. Days—Sunday or other nonjudicial day.

Stats. 1913, c. 61, sec. 1, providing that whenever a secular act is to be performed on a particular day, and that day is a nonjudicial one, the act may be performed on the next judicial day, does not permit a nominee at a primary election to be held September 1 to file his papers on August 3, though August 2 falls on Sunday; section 7 of subchapter 3 of election law of 1913 (Stats. 1913, c. 284) providing that such papers shall be filed at least thirty days prior to the primary election. *State v. Brodigan*, 37 Nev. 458; 142 P. 520.

TIME FOR ACTION

See Officers, 4.

TIME FOR DISMISSAL

See Motions, 2.

TIME FOR FILING

See Mechanics' Liens, 5, 11, 12.

TIME FOR FILING COST BILL

See Costs, 17.

TIME FOR FILING MOTION TO DISMISS APPEAL

See Appeal and Error, 73.

TIME FOR FILING STATEMENT ON APPEAL

See Appeal and Error, 52.

TIME FOR MOTION

See New Trial, 5.

TIME FOR OBJECTION TO COST BILL

See Costs, 17.

TIME FOR RAISING FEDERAL QUESTION

See Courts, 20.

TIME FOR TAKING APPEAL

See Appeal and Error, 28, 86.

TIME OF VESTING

See Descent and Distribution, 3.

TIME RECKONED ON ORDER "MADE AND ENTERED"

See Appeal and Error, 28, 29.

TIME TO AMEND COMPLAINT

See Appeal and Error, 22.

TITLE

See Adverse Possession, 2; Forcible Entry and Detainer, 1, 4; Mortgages, 2; Quieting Title, 2; Religious Societies, 1; Waters and Watercourses, 4.

TITLE ACQUIRED

See Eminent Domain, 4.

TITLE OF PLEDGEE

See Pledges, 1.

TITLE TO PROPERTY OFFERED FOR SHIPMENT

See Carriers, 2.

TITLE TO REAL PROPERTY

See Descent and Distribution, 3.

TITLES AND SUBJECTS

See Statutes, 14, 16.

"TO BE SELECTED"

See Homestead, 2.

TORT AND CONTRACT

See Action, 5.

TORTS

See Actions, 2; Carriers, 9, 16.

TOWN SITES

See Mandamus, 6.

TOWN SITES, FEDERAL

See Judges, 1; Prohibition, 4.

TRANSACTIONS WITH DECEASED PERSONS

See Witnesses, 4.

TRANSCRIPT ON APPEAL

See Appeal and Error, 18, 54, 55, 94; Costs, 11, 15.

TRANSFERRING STOCK

See Trover and Conversion, 2.

TRANSFER OF TITLE

See Replevin, 1.

TRANSITORY ACTIONS

See Abatement and Revival, 1, 2.

TRANSPORTING ORE

See Carriers, 2.

TRAVELING EXPENSES

See Schools and School Districts, 1.

TREASURER, STATE

See States, 8.

TREBLE DAMAGES

See Forcible Entry and Detainer, 1, 2, 3, 4; Landlord and Tenant, 10.

TRESPASS**II. ACTIONS.**

(A) *Right of Action and Defense.*
1. Title to support action.

(B) *Jurisdiction, Parties, Preliminary Proceedings, and Pleading.*
2. Issues, proof and variance.

II. ACTIONS

(A) **RIGHT OF ACTION AND DEFENSE**
1. **Title to support action.**

Where plaintiff had a license to cut and remove timber from a third person's land, he is not entitled to damages for injuries to the herbage on such land caused by defendant's trespassing sheep, for only the owner entitled to the herbage could maintain such action. *Anderson v. Berrum*, 36 Nev. 463; 136 P. 973.

Where plaintiff had a license to cut timber on another's land, and to flume it or carry it out, he may maintain an action for injuries caused by defendant's trespassing sheep to the roads and the flume. *Id.*

(B) **JURISDICTION, PARTIES, PRELIMINARY PROCEEDINGS, AND PLEADING**

2. **Issues, proof and variance.**

In an action for damages by trespassing

sheep, where it appeared that plaintiff had only a license to cut timber on the lands of a third person, he cannot, under a complaint alleging damages to the herbage on that land and other land owned by him, recover anything for injury to the verdure; the complaint not designating how much damage was done on the different lands. *Id.*

See *Animals*, 2; *Waters and Watercourses*, 9, 12, 18.

TRIAL

I. NOTICE OF TRIAL AND PRELIMINARY PROCEEDINGS.

1. Order of trial of separate issues.

III. COURSE AND CONDUCT OF TRIAL.

2. Right to open and close.
3. Remarks and conduct of judge.

IV. RECEPTION OF EVIDENCE.

(A) *Introduction, Offer, and Admission of Evidence.*

4. Offer of proof—Necessity and sufficiency.
5. Effect of admission of evidence—Restriction to special purpose.

(C) *Objections, Motions to Strike Out, and Exceptions.*

6. Effect of failure to object or except.

V. ARGUMENTS AND CONDUCT OF COUNSEL.

7. Comments on failure to produce evidence or call witness.
8. Withdrawal or correction of objectionable matter.
9. Action of court.

VI. TAKING CASE OR QUESTION FROM JURY.

(A) *Questions of Law or of Fact.*

10. Questions of law or of fact—Weight and sufficiency of evidence.
11. Effect of failure to question sufficiency of evidence.

(C) *Dismissal and Nonsuit.*

12. Hearing and determination of motion.

VII. INSTRUCTIONS TO JURY.

(A) *Province of Court and Jury.*

13. Assumption by judge as to facts.
14. Assumption by judge as to facts—Uncontroverted facts or evidence.
15. Weight and sufficiency of evidence.

(B) *Necessity and Subject-Matter.*

16. Issues and theories of case.

(C) *Form, Requisites, and Sufficiency.*

17. Form and language.
18. Confused or misleading instructions.

(D) *Applicability to Pleadings and Evidence.*

19. Application of instructions to case—Pleadings and issues.
20. Application of instructions to case—Facts and evidence.
21. Instructions excluding or ignoring issues, defenses, or evidence.

(E) *Requests or Prayers.*

22. Necessity.
23. Instructions already given.
24. Modification or substitution by court.

VII. INSTRUCTIONS TO JURY—Contd.

(F) *Objections and Exceptions.*

25. Sufficiency and scope of objections or exceptions to instructions given—General or specific.

(G) *Construction and Operation.*

26. Construction and effect of charge as a whole.
27. Error in instructions cured by withdrawal or giving other instructions.

IX. VERDICT.

(B) *Special Interrogatories and Findings.*

28. Failure to answer interrogatories or make findings.
29. Findings—Inconsistency with verdict.

X. TRIAL BY COURT.

(A) *Hearing and Determination of Cause.*

30. Power and duty of court.

(B) *Findings of Fact and Conclusions of Law.*

31. Preparation and form.
32. Sufficiency.

I. NOTICE OF TRIAL AND PRELIMINARY PROCEEDINGS

1. Order of trial of separate issues.

Where the answer raises a question preliminary to the right of the court to determine the merits, it is proper for the court to first determine such matter before considering the issues going to the merits. *McKim v. District Court*, 33 Nev. 44; 110 P. 4.

III. COURSE AND CONDUCT OF TRIAL

2. Right to open and close.

The party who has the burden of proof is universally allowed to open and close, and such burden, in condemnation proceedings to assess damages, was upon the defendant; moreover, under Rev. Laws, 5210, providing that, unless the judge for special reasons otherwise directs, the plaintiff must commence and may conclude the argument, and matter was within the discretion of the court, and, in the absence of showing of abuse, its ruling permitting the defendant to open and close should not be disturbed. *T. R. G. E. Co. v. Durham*, 38 Nev. 312; 149 P. 61.

3. Remarks and conduct of judge.

Remarks by the trial judge which are calculated to mislead the jury or prejudice the rights of either party are reversible. *Peterson v. Silver Peak*, 37 Nev. 117; 140 P. 519.

In ruling on the admissibility of evidence, the trial judge should confine his remarks strictly to that question, and not make unnecessary statements, such as that the evidence will do no harm, or as to one of the attorneys being a good fellow, etc. *Id.*

IV. RECEPTION OF EVIDENCE

(A) *INTRODUCTION, OFFER, AND ADMISSION OF EVIDENCE*

4. Offer of proof—Necessity and sufficiency.
- In a miner's action for personal injuries,

defendant offered in evidence a conversation between witness and plaintiff some time after the accident to show, as stated by counsel, that the action was instituted in bad faith, with knowledge by the plaintiff that he knew that the shift boss and defendant were not responsible for his injury, and that he alone was responsible, and to contradict any evidence of negligence by defendant, and to prove its claim that the accident was not caused by its negligence, and to contradict plaintiff's evidence tending to show negligence by the defendant. Held that the offer was sufficient to warrant admission of a declaration against interest by the plaintiff. *Peterson v. Silver Peak*, 37 Nev. 118; 140 P. 519.

5. Effect of admission of evidence—Restriction to special purpose.

In a trial, without a jury, of a husband's action for criminal conversation, the admission in evidence of letters to plaintiff from his wife containing matters competent and matters incompetent was not error, where the court stated that the letters were admitted merely to contradict any inference that the husband and wife were living together, and there was other and competent evidence relative to the adultery relied on as the basis of the action. *Rehling v. Brainard*, 38 Nev. 16; 144 P. 167; Ann. Cas. 1917C, 656.

(C) OBJECTIONS, MOTIONS TO STRIKE OUT AND EXCEPTIONS

6. Effect of failure to object or except.

That the defendant insurer, sued on a life policy, consented that the testimony of other witnesses taken before the coroner might be read in evidence, was no waiver of defendant's right to object to the admission of a transcript of the testimony of another witness, given at the coroner's inquest and offered to impeach his testimony at the trial. *New York Life Ins. Co. v. Neasham*, 250 F. 787; 163 C. C. A. 119.

V. ARGUMENTS AND CONDUCT OF COUNSEL

7. Comments on failure to produce evidence or call witness.

Permitting counsel for plaintiff in an action for injury to a passenger from derailment of a train to draw an inference in his argument that because the engineer and conductor of the train were not called or their absence explained their testimony would have been adverse to defendant was not error. *Sherman v. S. P. Co.*, 33 Nev. 385; 111 P. 416; 115 P. 909; Ann. Cas. 1914A, 217.

8. Withdrawal or correction of objectionable matter.

Where, on the trial of an action against a railroad for injuries to a passenger by collision, plaintiff's attorney in his argument inadvertently referred to the nonattendance of witnesses for defendant, when, in fact, they were present and testified, it is no ground for reversal, where the statement

is withdrawn and defendant failed to account for the accident to the satisfaction of the jury, and to overcome the prima facie presumption of negligence which arises from the derailment of the car in which plaintiff is riding. *Id.*

9. Action of court.

Counsel's improper criticism of defendant by statements outside of the evidence, in view of the court's direction to disregard them and of the refusal to grant a new trial after verdict for plaintiff, held not to warrant a remand for a new trial. *Leete v. S. P. Co.*, 37 Nev. 40; 139 P. 20.

VI. TAKING CASE OR QUESTION FROM JURY

(A) QUESTIONS OF LAW OR OF FACT

10. Questions of law or of fact—Weight and sufficiency of evidence.

Where reasonable men might fairly differ on the conclusions to be drawn from the evidence, the case should not be taken from the jury on motion for nonsuit. *Week v. Reno Traction Co.*, 38 Nev. 285; 149 P. 65.

11. Effect of failure to question sufficiency of evidence.

Where the defendant waived its motion for a nonsuit by offering evidence, the only manner of testing the sufficiency of plaintiff's evidence is by motion for new trial upon the ground of insufficiency. *Hochsultz v. Potosi Zinc Co.*, 33 Nev. 198; 110 P. 713.

(C) DISMISSAL AND NONSUIT

12. Hearing and determination of motion.

On motion for nonsuit, the trial court must construe the evidence most favorably to the plaintiff. *Week v. Reno Traction Co.*, 38 Nev. 285; 149 P. 65.

On a motion for a nonsuit, the evidence should be construed in favor of the plaintiff. *Su Lee v. Peck*, 40 Nev. 20; 160 P. 18.

VII. INSTRUCTIONS TO JURY

(A) PROVINCE OF COURT AND JURY

13. Assumption by judge as to facts.

In an employee's action for injuries, an instruction that the mere facts that prior to the injury the rip saw used by him was in a defective condition, which was known to him up to and including the time of injury, and that he was actually injured as a result of such defective condition, did not in themselves establish that the rip saw was so openly and obviously dangerous on account of such defects that a reasonably prudent person would not have used it, was not erroneous or misleading, as assuming the facts therein stated to have been proved or admitted. *Konig v. N. C. O. Ry.*, 36 Nev. 187; 135 P. 141.

14. Assumption by judge as to facts—Uncontroverted facts or evidence.

Where plaintiff was injured by coming in contact with a live wire and defendants admitted in answer and evidence that the

voltage was at least 440, the court did not err in assuming that the wire carried a current of 440 volts. *Cutler v. Pittsburg Silver Peak*, 34 Nev. 46; 116 P. 418.

15. Weight and sufficiency of evidence.

An instruction that if the jury found certain facts it would be their duty to find a verdict for plaintiff in a sum not greater than \$15,000 was not objectionable, as charging them that it was their duty to return a verdict for plaintiff in that specific amount. *Cutler v. Pittsburg Silver Peak G. M. Co.*, 34 Nev. 45; 116 P. 418.

(B) NECESSITY AND SUBJECT-MATTER

16. Issues and theories of case.

Where the parties on trial each proceeded on a different theory of the case, the court must give instructions applicable to both theories upon request. *Zelavin v. Tonopah Belmont*, 39 Nev. 2; 149 P. 188.

The parties having different theories of the case, and there being evidence tending to support each, instructions should be given on both. *Crosman v. Southern Pacific Co.*, 42 Nev. 92; 173 P. 223.

(C) FORM, REQUISITES AND SUFFICIENCY

17. Form and language.

The practice of capitalizing a portion of an instruction should not be indulged in. *Week v. Reno Traction Co.*, 38 Nev. 286; 149 P. 65.

18. Confused or misleading instructions.

The giving of an instruction, although embodying a correct rule of law, is reversible error, where it has a tendency to mislead the jury. *Zelavin v. Tonopah Belmont*, 39 Nev. 1; 149 P. 188.

A requested instruction, which is misleading, is properly refused. *Zelavin v. Tonopah Belmont*, 39 Nev. 2; 149 P. 188.

(D) APPLICABILITY TO PLEADINGS AND EVIDENCE

19. Application of instructions to case—Pleadings and issues.

In an action for injuries to a servant while making certain alterations in a building, by being shocked by a high voltage electric wire from which the insulation had been removed, certain instructions given held applicable to the issues. *Cutler v. Pittsburg Silver Peak*, 34 Nev. 46; 116 P. 418.

20. Application of instructions to case—Facts and evidence.

The giving of an instruction not applicable to the evidence is erroneous, though abstractly correct. *Week v. Reno Traction Co.*, 38 Nev. 286; 149 P. 65.

Where the plaintiffs contended that the defendant railroad company had converted a building which they had constructed on its right of way with the permission of the company's station agent and section foreman, an instruction that in such case the company was estopped to claim the build-

ing if the agents had a reasonably general control of its affairs at that point was not warranted, where there was no testimony that such agents exercised a reasonably general control. *Mirodrias v. S. P. Co.*, 38 Nev. 119; 145 P. 912.

The speed of defendant street-railroad company's car after it struck and injured plaintiff's automobile was a matter immaterial to the issues, in an action for injuries sustained by such automobile in collision, where it threw no light on what preceded, and an instruction touching it was properly stricken; the matter being improper for instruction except to the effect that it be disregarded. *Week v. Reno Traction Co.*, 38 Nev. 287; 149 P. 65.

In a miner's action for injuries by a falling rock, an instruction upon the fellow-servant doctrine is erroneous, where there is no evidence to support it. *Zelavin v. Tonopah Belmont*, 39 Nev. 2; 149 P. 188.

21. Instructions excluding or ignoring issues, defenses, or evidence.

An instruction which takes from the consideration of the jury defendant's theory of the case is erroneous. *Id.*

In an action for restitution of real property, in which the defendant alleged that he was the plaintiff's husband and that the property was community property, an instruction that, as the relationship existing between the parties in another state prior to their taking up their abode in Nevada was illicit and meretricious, that relationship must be by the jury presumed to continue illicit and meretricious throughout all the time plaintiff and defendant continued to live together, unless by a preponderance of proof a valid marriage contract was actually made and actually entered into between the parties within Nevada, was erroneous, as taking all force and effect from evidence in the case tending to establish a marital relation between the parties during their residence in Nevada. *Parker v. De Bernardi*, 40 Nev. 361; 164 P. 645.

(E) REQUESTS OR PRAYERS

22. Necessity.

Since the defense of contributory negligence may be abandoned at any time during the trial, it is not obligatory upon the court to give instructions thereon, in absence of request. *Zelavin v. Tonopah Belmont*, 39 Nev. 2; 149 P. 188.

If a defendant in a personal injury action desired an instruction on the question of contributory negligence, he must request it. *Id.*

23. Instructions already given.

It was not error to refuse an instruction, the subject-matter of which was covered by an instruction given. *Konig v. N. C. O. Ry. Co.*, 36 Nev. 188; 135 P. 141.

24. Modification or substitution by court.

It is better practice to rewrite an instruction when modifying it than to strike out a portion with a pen, leaving it in such

condition as to be easily read. *Weck v. Reno Traction Co.*, 38 Nev. 286; 149 P. 65.

(F) OBJECTIONS AND EXCEPTIONS

25. Sufficiency and scope of objections or exceptions to instructions given—General or specific.

Where an objection and exception were taken to an instruction a portion only of which was abstract, but did not point out that such portion was not based on evidence, error could not be predicated on the giving of the charge, for only where a charge is erroneous as a whole or asserts but a single proposition is a general exception available. *Id.*

(G) CONSTRUCTION AND OPERATION

26. Construction and effect of charge as a whole.

All instructions should be read in the light of each other and considered in their entirety, when determining whether a portion of the instructions is erroneous, or, by reason of a conflict, or otherwise, is calculated to mislead the jury; and where separate instructions are sound in law, even though they may not be as complete as they might have been, but if read together they are consistent and state correct principles of law, and are not calculated to deceive, they will not be reversible error. *Cutler v. Pittsburg Silver Peak*, 34 Nev. 46; 116 P. 418.

27. Error in instructions cured by withdrawal or giving other instructions.

An instruction that the jury were at liberty to and should take into consideration all of the facts and circumstances surrounding the testimony of the witnesses in determining the weight, credit, and value to be given such testimony, that if their statements were contradicted by other witnesses the jury should give their testimony only such credit as they might believe it was entitled to under all the circumstances detailed in evidence, and that if they believed that any witness had wilfully sworn falsely to any material fact they might disregard the whole or any part of such witness's testimony, "except in so far as the same is corroborated by some other credible witness or witnesses," was not erroneous, notwithstanding the failure of the quoted portion to take into account circumstantial evidence, or the circumstantial features of the case; the first part of the instruction having taken these elements into consideration. *Konig v. N. C. O. Ry.*, 36 Nev. 187; 135 P. 141.

An instruction that the refusal of the agents of a carrier to honor a ticket properly issued renders the company liable, even though the agent was honestly mistaken concerning its validity, is not erroneous as authorizing a recovery of exemplary damages for such an honest mistake, even though the court had ruled that under the testimony exemplary damages might be recovered, where the jury was also instructed that if the ejection of a passenger

was in good faith and without malice or unnecessary force on the part of the railroad servants, the company was not liable beyond the actual damage. *Forrester v. S. P. Co.*, 36 Nev. 249; 134 P. 753; 48 L. R. A. (N.S.) 1.

An instruction that an assurance by an employer that a danger would be remedied removed all ground for the argument that the employee by continuing in the employment engaged to assume the risk, was cured by other instructions that under such conditions the employee might continue in the service without assuming the risk, provided the danger was not of so imminent a character that a person of ordinary prudence would refuse to continue in the service, and that, where an employer had expressly promised to repair a defect, the employee could recover for an injury occurring by reason thereof, within such period of time after the promise as it would be reasonable to allow for its performance. *Konig v. N. C. O. Ry.*, 36 Nev. 185; 135 P. 141.

Where, in an action for injuries to a servant, the court had specifically referred to the elements of negligence and charged that the jury must find such elements to have existed, and that such negligence was the proximate cause of the injury, before they could return a verdict against defendants, defendants could not complain that another instruction was erroneous, as assuming that plaintiff had been damaged. *Cutler v. Pittsburg Silver Peak*, 34 Nev. 46; 116 P. 418.

IX. VERDICT

(B) SPECIAL INTERROGATORIES AND FINDINGS

28. Failure to answer interrogatories or make findings.

Under Rev. Laws, 5222, providing that where a special finding of facts is inconsistent with the general verdict the former controls, and the court must give judgment accordingly, if a finding in defendant's favor on special interrogatories would not be inconsistent with a general verdict for plaintiff, a failure to find at all on such interrogatories cannot control such general verdict. *Weck v. Reno Traction Co.*, 38 Nev. 287; 149 P. 65.

29. Findings—Inconsistency with verdict.

The inconsistency between special findings and the general verdict which, under Stats. 1915, c. 92, makes the former controlling, must be irreconcilable; one that no reasonable hypothesis or inference under the pleadings can remove. *Crosman v. Southern Pacific Co.*, 42 Nev. 92; 173 P. 223.

X. TRIAL BY COURT

(A) HEARING AND DETERMINATION OF CAUSE

30. Power and duty of court.

When an indisputable fact appears upon a hearing in any case that makes necessary or proper the making of a certain order or

the imposing of a certain condition, the court has the discretion to make the order or impose the condition at once without waiting for counsel to conclude. *Boyce v. Thrd Chance M. Co.*, 36 Nev. 53; 133 P. 397.

(B) FINDINGS OF FACT AND CONCLUSIONS OF LAW

31. Preparation and form.

Though a party is entitled to specific findings regarding material issues on which a judgment is based, if he prepares and submits them to the court with a request therefor, the court is not required to draw them. *Thompson v. Tonopah L. Co.*, 37 Nev. 183; 141 P. 69.

32. Sufficiency.

On the issue whether a claimant to mining claims had performed the necessary discovery work, the findings and opinion of the trial court showing facts on which the court could determine whether the discovery work was sufficient were sufficient statements of fact. *Murray v. Osborne*, 33 Nev. 267; 111 P. 31.

See Appeal and Error, 110.

TRIAL BY JURY

See Constitutional Law, 47.

TRIAL OF ACCOMPLICE

See Criminal Law, 43.

TRIALS

See Criminal Law, 50, 54, 62, 65, 66, 67, 68, 72, 110; New Trial, 10, 11.

TRIVIAL ERROR

See Appeal and Error, 130.

TROVER AND CONVERSION

I. ACTS CONSTITUTING CONVERSION AND LIABILITY THEREFOR.

1. Nature and elements.
2. Assertion of ownership or control.
3. Detention of property—Demand and refusal.

II. ACTIONS.

(B) *Jurisdiction, Parties, Preliminary Proceedings, and Pleading.*

4. Issues, proof and variance.

(D) *Damages.*

5. Value of property—Measure of damages.
6. Value of property—Property of fluctuating value.
7. Value of property—Title deeds and other documents.

I. ACTS CONSTITUTING CONVERSION AND LIABILITY THEREFOR

1. Nature and elements.

As a general rule, it is a conversion to receive property from one wrongfully in possession, and thereafter to exercise control of it against the wish of the person

entitled. *Dixon v. Southern Pacific Co.*, 42 Nev. 73; 172 P. 368; 177 P. 14.

2. Assertion of ownership or control.

Where a corporation's refusal to issue new stock certificates in smaller denominations for old certificates presented by a shareholder for that purpose is based upon its wrongful assertion of ownership of the stock, the corporation is liable to the shareholder for conversion of the stock. *Robinson M. Co. v. Riepe*, 40 Nev. 121; 161 P. 304.

3. Detention of property—Demand and refusal.

Where the secretary of a corporation refused to register a transfer of stock when presented by the transferee, no formal demand was necessary before bringing an action for conversion since the refusal was an assertion of ownership by the corporation. *Robinson M. Co. v. Riepe*, 37 Nev. 27; 138 P. 910.

II. ACTIONS

(B) JURISDICTION, PARTIES, PRELIMINARY PROCEEDINGS, AND PLEADING

4. Issues, proof and variance.

In an action against a corporation for conversion of stock in refusing to register its transfer on its books, it was not necessary that the proof should be in strict conformity with the averment as to the date of conversion. *Id.*

(D) DAMAGES

5. Value of property—Measure of damages.

The measure of damages for a conversion of property is its value at the time of the conversion, with legal interest from the date to that of rendering judgment, though special and exemplary damages may be allowed in certain cases. *Dixon v. Southern Pacific Co.*, 42 Nev. 73; 172 P. 368; 177 P. 14.

6. Value of property—Property of fluctuating value.

In an action against a corporation for the conversion of stock in refusing to register its transfer on its books, the measure of damages was the value of the stock at the date of conversion, with legal interest from the conversion to judgment. *Robinson M. Co. v. Riepe*, 37 Nev. 27; 138 P. 910.

7. Value of property—Title deeds and other documents.

In a suit to compel an alleged trustee to account for the value of corporate stock alleged to have been converted by him, plaintiff's measure of damages was the market value of the stock at the time of the conversion, and evidence of its value at a subsequent time, more than two years thereafter, was inadmissible and insufficient on which to predicate judgment. *Torp v. Clemons*, 37 Nev. 474; 142 P. 1115.

See Carriers, 2, 5.

TRUST

See Limitation of Actions, 9, 10; Wills, 7.

TRUST FUNDS

See Banks and Banking, 10, 14.

TRUSTEE

See Limitation of Actions, 13.

TRUSTEE OF EXPRESS TRUST

See Parties, 3.

TRUSTEES

See Joint Adventures, 2.

TRUSTEES, SCHOOL

See School and School Districts, 4.

TRUSTS**I. CREATION, EXISTENCE, AND VALIDITY.****(B) Resulting Trusts.**

1. Evidence to establish trust—Weight and sufficiency.

(C) Constructive Trusts.

2. Statute of frauds and statutes prohibiting parol trusts.
3. Contracts and transactions between persons in confidential relations.

II. CONSTRUCTION AND OPERATION.**(B) Estate or Interest of Trustee and of Cestui Que Trust.**

4. Adverse possession of trustee.

VII. ESTABLISHMENT AND ENFORCEMENT OF TRUST.**(B) Right to Follow Trust Property or Proceeds Thereof.**

5. Trust property transferred to third persons.

I. CREATION, EXISTENCE, AND VALIDITY**(B) RESULTING TRUSTS****1. Evidence to establish trust—Weight and sufficiency.**

In a suit to establish a resulting trust in corporate stock, evidence held insufficient to sustain a finding that the trust existed as to more than fifty shares of stock. *Torp v. Clemons*, 37 Nev. 474; 142 P. 1115.

(C) CONSTRUCTIVE TRUSTS**2. Statute of frauds and statutes prohibiting parol trusts.**

Where an implied trust is effectuated by breach of contract, contract on which it was based, notwithstanding it was made for the purpose of acquiring an estate or interest in land, need not be in writing. *Miller v. Walser*, 42 Nev. 499; 181 P. 437.

3. Contracts and transactions between persons in confidential relations.

Where several persons entered into an agreement to acquire mining property in equal interests, one party to contribute experience and service in inspecting the mining property, a corporation to be formed

if he approved the mining property, and the person inspecting the property, in violation of his agreement, withheld from the one agreeing to furnish the money the fact that property was of great value, appropriating the interest of such person by advancing the purchase price himself, an implied trust resulted as effectually as if the absent member had actually furnished the consideration to purchase the property. *Miller v. Walser*, 42 Nev. 498; 181 P. 437.

II. CONSTRUCTION AND OPERATION**(B) ESTATE OR INTEREST OF TRUSTEE AND OF CESTUI QUE TRUST****4. Adverse possession of trustee.**

Where though plaintiff, at the time she accepted a deed from a trustee which did not include land to which she believed herself entitled under the terms of the trust, was the trustee's wife, she procured a divorce about one year later, she could not thereafter assert that she was under the trustee's influence to defeat his claim of title by adverse possession. *Boydston v. Jacobs*, 38 Nev. 176; 147 P. 447.

VII. ESTABLISHMENT AND ENFORCEMENT OF TRUST**(B) RIGHT TO FOLLOW TRUST PROPERTY OR PROCEEDS THEREOF****5. Trust property transferred to third persons.**

Where a wife died, leaving her husband and several children as heirs of her separate estate, and these children, in order to enable their father to make advantageous terms with one holding an incumbrance on the property, deeded their interest to him, with the understanding that he should then reconvey it, the father held the various shares in trust for the children, and his conveyance of the entire estate to part of his children, excluding others, will not defeat the rights of those excluded; for, having knowledge of the arrangements, the grantees take no greater title than their grantor, and hold the share of the excluded children in trust. *Winters v. Winters*, 34 Nev. 323; 123 P. 17, 1135.

See Pledges, 1.

TURBULENT SPIRIT OF DECEASED

See Criminal Law, 111.

ULTIMATE FACTS

See Evidence, 18, 21.

UNAUTHORIZED SALE

See Estoppel, 6.

UNCERTAINTY

See Executors and Administrators, 10.

UNCERTAINTY OF VERDICT

See Criminal Law, 83, 88.

UNCONSTITUTIONALITY OF STATUTE

See Constitutional Law, 14.

UNDERTAKING ON APPEAL

See Appeal and Error, 34, 52; Insane Persons, 1.

UNDERTAKINGS

See Appeal and Error, 31, 40; Justice of the Peace, 12.

UNDISCLOSED PRINCIPAL

See Principal and Agent, 7.

"UNINCORPORATED TOWNS"

See Licenses, 1.

UNITED STATES**II. PROPERTY, CONTRACTS AND LIABILITY.**

1. Construction and operation of contracts.

IV. CLAIMS AGAINST UNITED STATES.

2. Default in payment under contract—Interest.

II. PROPERTY, CONTRACTS, AND LIABILITY**1. Construction and operation of contracts.**

The rule that a contract is to be construed most strongly against the party preparing it applies to the government with respect to contract for the survey of public land. *Scully v. United States*, 197 F. 328.

IV. CLAIMS AGAINST UNITED STATES**2. Default in payment under contract—Interest.**

Interest cannot be allowed on a claim against the United States arising under a contract, unless provided for by the contract or by statute. *Id.*

UNITED STATES COURTS

See Courts, 8, 19.

UNITED STATES SURVEYOR-GENERAL

See Mines and Mining, 16.

UNLAWFUL DETAINER

See Landlord and Tenant, 2, 8, 9, 10.

UNLAWFUL GRAZING

See Animals, 2.

UNLAWFUL OR IMMORAL PURPOSE

See Sales, 3.

UNPROFESSIONAL CONDUCT

See Appeal and Error, 68.

UNRECORDED BILL OF SALE

See Fraudulent Conveyances, 2.

USE

See Waters and Watercourses, 26.

USES

See Charities, 1.

VACANCIES

See Elections, 9.

VACATING OF DECREE

See Divorce, 17.

VACATION OF JUDGMENT

See Judgment, 18.

VALID SERVICE BY PUBLICATION

See Judgment, 9.

VALID MARRIAGE

See Marriage, 3; Trial, 21.

VALIDITY

See Contracts, 2; Mortgages, 2; Statutes, 3.

VALIDITY OF ASSESSMENT

See Taxation, 3.

VALIDITY OF CONTRACT

See Intoxicating Liquors, 7.

VALIDITY OF CONTRACTS

See Railroads, 1.

VALIDITY OF ELECTION LAWS

See Constitutional Law, 14, 17.

VALIDITY OF LOCATION OF MINING CLAIMS

See Mines and Minerals, 1, 2, 4, 10.

VALIDITY OF PROCESS

See Judgment, 1, 33.

VALIDITY OF RELEASE FROM LIABILITY

See Master and Servant, 35.

VALIDITY OF TAX SALES

See Taxation, 19.

VALIDITY OF WILLS

See Wills, 2.

VALUATION OF PROPERTY

See Taxation, 7.

VALUE OF PROPERTY CONVERTED

See Trover and Conversion, 5.

VARIANCE

See Pleading, 18.

VEHICLES

See Highways, 1.

VEIN

See Mines and Minerals, 13.

VENDOR AND PURCHASER**II. CONSTRUCTION AND OPERATION OF CONTRACT.****1. Options.****III. MODIFICATION OR RESCISSION OF CONTRACT.****(D) Payment of Purchase Money.****2. Excuses for default or delay.****V. RIGHT AND LIABILITIES OF PARTIES.****(B) As to Third Persons.****3. Assignees of contracts or bond for title.****VI. REMEDIES OF VENDOR.****(A) Lien and Recovery of Land.****4. Creation of lien.****5. Waiver, loss or discharge of lien.****(B) Actions for Purchase Money.****6. Right of action.****7. Conditions precedent.****8. Defenses.****II. CONSTRUCTION AND OPERATION OF CONTRACT****1. Options.**

An option contract must so describe the property that it can be identified from the instrument itself, although parol evidence is admissible to show the description's application. *De Remer v. Anderson*, 41 Nev. 287; 169 P. 737.

III. MODIFICATION OR RESCISSION OF CONTRACT**(D) PAYMENT OF PURCHASE MONEY****2. Excuses for default or delay.**

Where a contract for the sale of an interest in real and personal property provided that, if the title to any part thereof not conveyed by quit-claim deed should be found defective, the vendors should perfect the same as soon as possible, and that all payments thereafter to be made as well as the delivery of certain stock should be delayed until such titles were perfected, the vendee was excused from a failure to

tender the purchase price, etc., by the fact that there was an apparent defect in the title to certain mining claims comprising a part of the property due to a failure to perform or failure to furnish proof of performance of the annual labor on the claims required by law. *English v. Mound House Plaster Co.*, 192 F. 717.

V. RIGHTS AND LIABILITIES OF PARTIES**(B) AS TO THIRD PERSONS****3. Assignees of contracts or bond for title.**

Where land was sold under contract providing that the agreement should bind the successors, heirs, and assigns of the parties, an assignee of the purchasers, who was not a party to the contract and did not execute, sign, or receive it, was not liable to the vendor for the unpaid balance of the price, since the promise of a purchaser of land to pay therefor cannot be enforced against his assignee, either in an action for specific performance or for damages, in the absence of agreement to that effect by the assignee. *Southern Pacific Co. v. Butterfield*, 39 Nev. 177; 154 P. 932.

VI. REMEDIES OF VENDOR**(A) LIEN AND RECOVERY OF LAND****4. Creation of lien.**

While a vendor ordinarily has a lien on the land for the unpaid purchase money, his right to hold and maintain such lien must be determined from the nature of the transaction, the circumstances surrounding the conveyance, and the intention of the parties at the time of making the contract, for the right of a vendor cannot be determined by subsequent acts of either party. *Jensen v. Wilsler*, 36 Nev. 37; 132 P. 16; Ann. Cas. 1914D, 1220.

5. Waiver, loss or discharge of lien.

It requires no express waiver on the part of a vendor to destroy his vendor's lien for the unpaid purchase price; the law presuming a waiver whenever the vendor accepts any independent security. *Id.*

Though vendor ordinarily has a lien for unpaid purchase price, such lien cannot be claimed where vendor has accepted other security for payment of the price, such as a promissory note or a mortgage. *Id.*

Where a vendor of land accepted a certificate of deposit in payment of the purchase price, or at least as security for that portion of the purchase money indicated by the face of the certificate of deposit, and there was nothing to show that the vendor was imposed upon by artifice or trick, his right to a vendor's lien was waived. *Id.*

(B) ACTIONS FOR PURCHASE MONEY**6. Right of action.**

Under Rev. Laws, 5501, limiting the remedy of a mortgagee to an action in foreclosure where plaintiff, by executory contract, agreed to sell land, retaining title and reserving the right to maintain a suit for

the foreclosure of the agreement and any equity of redemption of the purchasers, although, pursuant to the contract, the purchasers went into possession, plaintiff could recover in a personal action for the unpaid balance of the purchase price, not being restricted to an action for foreclosure, as it was not a mortgagee, because a mortgagor holds legal title, and a mortgagee only an equitable lien. *Southern Pacific Co. v. Miller*, 39 Nev. 169; 154 P. 929.

7. Conditions precedent.

In an action by the agreed vendor of realty for the unpaid balance of the price, the averment in the complaint that plaintiff was and had been ready to convey, as agreed, upon performance of the contract by defendants, with an offer to deliver conveyance into court, was a sufficient tender. *Id.*

8. Defenses.

A vendee who is the real purchaser is liable for the purchase price, even though he directs that the title be transferred to another. *Jensen v. Wilslef*, 36 Nev. 38; 132 P. 16; *Ann. Cas.* 1914D, 1220.

VERDICT

See Appeal and Error, 104, 107, 108; Criminal Law, 13, 83, 88; Habeas Corpus, 7; Libel and Slander, 13; Trial, 28.

VERDICT BASED ON CONFLICTING EVIDENCE

See Appeal and Error, 104.

VERDICT OF JURY ADVISORY

See Appeal and Error, 80.

VESTED RIGHTS

See Constitutional Law, 31.

VIOLATION OF CONTRACT OF JOINT ADVENTURE

See Limitation of Actions, 4.

VOLUNTARY CONFESSION

See Criminal Law, 110; Witnesses, 17.

VOLUNTARY STATEMENT AGAINST INTEREST

See Criminal Law, 29.

VOLUNTARY SURRENDER

See Habeas Corpus, 2.

VOLUNTARY TESTIMONY

See Criminal Law, 27, 43.

VOLUNTEER

See Subrogation, 1.

VOTERS

See Elections, 2, 3.

VOTING

See Elections, 1.

WAIVER

See Criminal Law, 116; Mechanics' Liens, 9, 11, 12; New Trial, 5.

WAIVER IN MOTION FOR NEW TRIAL

See New Trial, 5.

WAIVER OF COUNSEL

See Criminal Law, 51.

WAIVER OF DEFECT

See Indictment and Information, 9.

WAIVER OF DEFECT IN NOTICE OF APPEAL

See Appeal and Error, 52.

WAIVER OF NOTICE OF OWNERSHIP

See Appeal and Error, 29.

WAIVER OF OBJECTION TO PROCEEDINGS

See New Trial, 5.

WAIVER OF PRELIMINARY EXAMINATION

See Criminal Law, 14.

WAIVER OF RIGHT

See Eminent Domain, 13; Jury, 2.

WAIVER OF UNDERTAKING ON APPEAL

See Appeal and Error, 52.

WANT OF PROSECUTION

See Dismissal and Nonsuit, 1, 2.

WANTONNESS

See Negligence, 12.

WARRANT

See Habeas Corpus, 13.

WASTE

See Landlord and Tenant, 10.

WATERS AND WATERCOURSES**I. APPROPRIATION OF RIGHTS IN PUBLIC LANDS.**

1. Constitutional and statutory provisions.
2. Waters open to appropriation.
3. Effect of appropriation as against subsequent grants, entries and payments.
4. Nature and extent of rights—Right of way and other interests in lands.
5. Change in place, manner, or purpose of diversion or use.

VI. APPROPRIATION AND PRESCRIPTION.

6. Appropriation and prescription in general.
7. Constitutional and statutory provisions.
8. Waters and rights subject to appropriation.
9. Proceedings to effect and character and elements of appropriation.
10. Excessive appropriation and use.
11. Nature and extent of rights acquired.
12. Nature and extent of rights acquired—Quantity of water.
13. Actions to determine, establish and protect rights.

VII. CONVEYANCES AND CONTRACTS.

14. Conveyances of land.
15. Contracts.
16. Remedies of parties.

VIII. ARTIFICIAL PONDS, RESERVOIRS, CHANNELS, AND DAMS.

17. Injuries by flowage.
18. Actions for injuries—Injunction.
19. Actions for injuries—Proceedings and review.

IX. PUBLIC WATER SUPPLY.**(A) Domestic and Municipal Purposes.**

20. Water rents and other charges.

(B) Irrigation and Other Agricultural Purposes.

21. Nature and extent of right to water.
22. Actions to establish and protect water rights.
23. Sale of water and supply and use for irrigation.
24. Injuries incident to supply or use.
25. Injuries incident to supply or use—Overflow or leakage.
26. Injuries incident to supply or use—Actions.
27. Offenses incident to supply or use of water.

I. APPROPRIATION OF RIGHTS IN PUBLIC LANDS**1. Constitutional and statutory provisions.**

Due process of law is not limited to judicial proceedings, but also comprehends determinations by administrative officers or boards, where notice and hearing are provided. *Ormsby County v. Kearney*, 37 Nev. 314; 142 P. 803.

The provisions generally of sections 18 to 51, inclusive, of the water law of 1913, considered for purposes of administration,

are not violative of article 3 of the state constitution, dividing the state government into three coordinate departments. *Ormsby County v. Kearney*, 37 Nev. 315; 142 P. 803.

The provisions of sections 18 to 51, inclusive, are not violative of section 6 of article 6 of the constitution, fixing the appellate and original jurisdiction of district courts, in that the determinations made by the state engineer of the relative rights of water users are not made in "cases in equity" or "cases at law," as those terms are used in said section. *Id.*

Questions presented in certain of the provisions of sections 18 to 51, inclusive, such as whether the determinations made by the state engineer have any force other than as being controlling for purposes of the administration of the law, until modified, suspended, or set aside by some order or decree of the court, or whether the methods prescribed for appeal from the decisions of the state engineer in cases of contest are valid, are unnecessary to be determined in this case, and will not be considered under the rule that constitutional questions not essential to a determination of the case will not usually be determined. *Id.*

The state, within its police power, may regulate the distribution of the waters of the state. The state is not only interested in protecting prior appropriators in their rights, but is also interested in the conservation of the waters to the end that the greatest possible amount of land may be brought under cultivation through an economical diversion and use of such waters. To accomplish this object the state has a right to exercise a superintending control. *Ormsby County v. Kearney*, 37 Nev. 316; 142 P. 803.

Assuming the establishment of the relative rights of water users on a stream-system, no constitutional right is infringed by a system of state control such as is provided in sections 52 to 56 of the water law of 1913 (Stats. 1913, c. 140). *Ormsby County v. Kearney*, 37 Nev. 314; 142 P. 803.

The constitutionality of sections 18 to 51 of the act of 1913, providing a method of determining the relative rights of water users upon a stream-system by the state engineer, should be viewed with reference to the purpose designed to be accomplished in sections 52 to 56 of said act, which latter sections are clearly administrative in character. *Id.*

The provisions of sections 18 to 51, inclusive, do not contemplate the deprivation of property without due process of law; they contemplate the securing to water users their rights, not the taking of the same away. For purposes of administration the enjoyment of such rights may be affected, but only after notice and hearing, and the right to adjudication by the courts is not taken away. *Id.*

It is not an unlawful interference with the vested rights of water appropriators to so control those rights that each may have

what belongs to him, but that he may not voluntarily interfere with the rights of others. *Ormsby County v. Kearney*, 37 Nev. 316; 142 P. 803.

The state, in the exercise of its police power to prescribe laws for the general welfare, may provide for inspection, regulation, and exercise a superintending control over the waters and watercourses of the state, and Stats. 1913, c. 140, known as the water act, and giving the state engineer the right to institute proceedings to determine the rights of the owners and persons controlling water rights in the state, if construed as administrative only and not to impair vested rights, is valid. *Ormsby County v. Kearney*, 37 Nev. 314; 142 P. 803.

It was the purpose of the legislature, particularly emphasized by section 84 of the water law of 1913, to recognize appropriations made under former laws or legislative acts and to keep those appropriations free from being affected or impaired by anything contained in the water law of 1913. *Ormsby County v. Kearney*, 37 Nev. 317; 142 P. 803.

2. Waters open to appropriation.

Where the waters of a spring flow in a natural watercourse, they are the subject of a beneficial appropriation. *Campbell v. Goldfield W. Co.*, 36 Nev. 458; 136 P. 976.

3. Effect of appropriation as against subsequent grants, entries and patents.

The location of a mining claim on land in which a spring arose will give the locator no claim to the water flowing from the spring in a natural channel, as against an appropriator; for a title to such flow can only be acquired by appropriation and application to a beneficial use. *Id.*

4. Nature and extent of rights—Rights of way and other interests in lands.

The federal government, having passed title to plaintiff to a right of way for a canal by statute, could convey no title thereto when it conveyed title to a mill site; and the patentee of the land embraced in the mill site took title subject to the right of way for the canal, and the purchaser of the mill site acquired no greater right. *Sheehan v. Kasper*, 41 Nev. 27; 165 P. 632.

5. Change in place, manner, or purpose of diversion or use.

One having no right to the waters of a spring which flow in a natural watercourse cannot object that a prior appropriator has changed his use of the stream. *Campbell v. Goldfield W. Co.*, 36 Nev. 458; 136 P. 976.

VI. APPROPRIATION AND PRESCRIPTION

6. Appropriation and prescription in general.

There is no absolute property in the waters of a natural stream, and the only right one may acquire thereto is by diverting the waters for a usufructuary purpose, and a water right, to be available, must be attached to the land and become in a sense

appurtenant thereto by actual application. *Prosole v. Steamboat Canal Co.*, 37 Nev. 154; 140 P. 720; 144 P. 744.

7. Constitutional and statutory provisions.

Stats. 1913, c. 140, making water for beneficial purposes appurtenant to the place of use, unless it becomes impracticable to beneficially use water at the place, in which case the right may be severed and transferred, and become appurtenant to another place, does not affect the rights acquired by one obtaining, for several years prior to the act, water for irrigation from a water company engaged in selling water for irrigation. *Id.*

Water law (Stats. 1913, c. 140), sec. 33, as amended by Stats. 1915, c. 253, sec. 3, providing that from and after the filing of the state engineer's order of determination with the clerk of the district court, and during the hearing thereon, the waters of the stream in question may be distributed as indicated in the order of determination, unless a stay bond be given, is not unconstitutional. *Vineyard L. & S. Co. v. District Court*, 42 Nev. 3; 171 P. 166.

The appropriation for use of water from a stream, although the rights acquired thereby are recognized by both federal and state governments, is subject to regulation and control by the state, which in the exercise of its police power may provide efficient regulations covering the distribution and use of such water. *Bergman v. Kearney*, 241 F. 884.

8. Waters and rights subject to appropriation.

Surplus or waste waters while on land of an individual are not subject to appropriation by others, and they cannot go on the land of the individual and cut and interfere with ditches thereof and divert the waters without becoming trespassers. *Bidleman v. Short*, 38 Nev. 467; 150 P. 834.

9. Proceedings to effect and character and elements of appropriation.

One who obtains water for irrigation from a water company, diverting water from a stream into an artificial waterway for sale, is an appropriator of water within the rule that a prior appropriation is a prior right, and the company is but his agent, and the right of user is equivalent to an easement in the artificial way of the company to the extent of the amount of water delivered by the company, which right is contingent only on the acts of the actual appropriator in paying a reasonable compensation for the water obtained. *Prosole v. Steamboat Canal Co.*, 37 Nev. 154; 140 P. 720; 144 P. 744.

Where, before the adoption of the present statute, an appropriator of waters of a creek constructed dams in the creek within his lands and constructed ditches and irrigated his lands and raised crops by irrigation, and removed a portion of an existing dam above his lands so as to let a part of the water continue in its regular course

down the creek, his acts were a sufficient appropriation. *Doherty v. Pratt*, 34 Nev. 343; 124 P. 574.

10. Excessive appropriation and use.

Where an appropriator of water for irrigation removed a portion of a dam constructed upon public land by a prior appropriator in such a manner as to divert the entire stream, and by such removal allowed a portion of the stream to continue in its natural course, his act was not a trespass and did not render his appropriation invalid; the rights of the owners of the dam being commensurate with their rights to the water, and they having no right to divert the entire stream to the injury of a subsequent appropriator, especially where they did not economically use all the water appropriated. *Id.*

11. Nature and extent of rights acquired.

The right of an actual appropriator of water for beneficial use, whether he obtains the water by diverting it from a natural watercourse or by purchase from a water company, is a part of the freehold. *Prosole v. Steamboat Canal Co.*, 37 Nev. 154; 140 P. 720; 144 P. 744.

A company owning and operating an artificial waterway and diverting water from a natural stream solely for gain by the sale of water to others, who actually apply it for irrigation, acquires no right to the water except the right to dispose of it for a reasonable compensation, and when water is once disposed of to a landowner applying the water for irrigation the control of the company over the water terminates. *Id.*

12. Nature and extent of rights acquired—Quantity of water.

Where a prior appropriator of water for irrigation was entitled to a certain amount at the point where it entered his land, the amount to which he was entitled at the point of diversion was such as by a reasonable and economical method of diversion would supply him at his land with the amount to which he was there entitled. *Doherty v. Pratt*, 34 Nev. 343; 124 P. 574.

A prior appropriator of water for irrigation did not employ a reasonable and economical method of diverting it where he permitted two-thirds of the water diverted to become lost in a swamp without any good excuse therefor. *Id.*

13. Actions to determine, establish and protect rights.

Rev. Laws, 4677, and the water law (Stats. 1913, c. 140), provide that in all measurements of water a cubic foot of water per second of time shall be the standard of measurement. Plaintiff sued the defendant to have it adjudged that he was the owner of three-eighths of the water of a creek, and the court so decreed and enjoined defendant from diverting such three-eighths of the water or any part thereof from the stream. Held, that the decree was too uncertain as to the quantity of water to which plaintiff was entitled, but should use the

standard of measurement described by the statute or some measurement readily translatable therein. *Ramelli v. Sorgi*, 38 Nev. 552; 149 P. 71.

In an action to have it adjudged that plaintiff was the owner of three-eighths of the water of such stream, it being an admitted fact from the pleadings that he and defendant had rights to certain of the water, equal in time, the court should have determined the rights of both parties, and should have specifically designated some point on the stream where plaintiff's rights might be measured. *Id.*

The predecessors of plaintiff and defendant and a third person appropriated water from a stream for irrigation purposes, the appropriation purporting to include all the waters of the stream. By a partition deed, the other parties conveyed to plaintiff's predecessor three-eighths of the water of such stream. Held, that in an action to determine plaintiff's rights, though the deed had some evidentiary value, it was not conclusive as to the quantum of such right, as the right to water in a natural stream must rest on proof of actual appropriation and application to a beneficial use, and a description of a water right in a deed is not ordinarily conclusive. *Id.*

In an action to determine water rights, where defendant's answer set up at least one allegation, which, uncontroverted and to be taken as true, established priority of appropriation in favor of defendant, plaintiff failing to establish the allegations of his complaint, the court properly dismissed the action on defendant's motion. *Bernard v. Metropolis L. Co.*, 40 Nev. 89; 160 P. 811.

VII. CONVEYANCES AND CONTRACTS

14. Conveyances of land.

Where a firm was in open and notorious possession and enjoyment of a ditch and power line for three or four years before defendant, who had lived in the vicinity of the property off and on for ten years, and continuously for one year, bought a mill site through which the right of way for the ditch passed, the firm's possession was sufficient to put defendant on notice. *Sheehan v. Kasper*, 41 Nev. 28; 165 P. 632.

15. Contracts.

Defendant, who made oral contract giving plaintiff's predecessor of title right to use overflow waters in consideration of his permitting overflow on his land, could not, after forty years of such use and expenditure of money in development of orchards, etc., cut off the water during irrigation season without becoming liable for consequent damages. *Bright v. Virginia and Gold Hill Water Co.*, 234 F. 839; 148 C. C. A. 437.

16. Remedies of parties.

Complaint alleging oral contract of plaintiff's predecessor in title to permit overflow of irrigation waters in consideration of right to use such waters, acted upon for over forty years by expenditure of money in

orchards, etc., and breach thereof by defendant who cut off the overflow when such waters were not needed elsewhere, is good as against demurrer, being based on cutting off overflow and not failure to divert waters so as to create an overflow. *Id.*

VIII. ARTIFICIAL PONDS, RESERVOIRS, CHANNELS AND DAMS

17. Injuries by flowage.

Where the dam of other parties in conjunction with that of defendants caused the overflow of plaintiff's ranch, defendants were not liable for the whole damage, since, when two or more parties act each for himself introducing the result complained of, they cannot be held liable for the acts of each other. *McLeod v. Miller & Lux*, 40 Nev. 447; 153 P. 566; 167 P. 27.

18. Actions for injuries—Injunction.

A subsequent appropriator should not interfere with the dam of a prior appropriator unless such interference is reasonably necessary, and then it should not injure the rights of the prior appropriator. *Doherty v. Pratt*, 34 Nev. 343; 124 P. 574.

To entitle plaintiffs to judgment restraining defendant from destroying a canal, ditch and power line, the canal must have had a valid existence, must have been owned by plaintiffs, who must have acquired a license to construct, maintain, and operate the branch ditch and power line irrevocable at defendant's will, and defendant must have been threatening to fill in and destroy the ditch and power line. *Sheehan v. Kasper*, 41 Nev. 27; 165 P. 632.

In suit to restrain the defendant from destroying a canal, ditch, and power line, where the superintendent of the exploration company from which plaintiffs claimed a license to construct the ditch and power line knew of the construction from the beginning of operations, and no protest was made, the court will presume that plaintiffs had a license from the exploration company. *Id.*

19. Actions for injuries—Proceedings and review.

In an action for injury to plaintiff's ranch caused by an overflow from defendant's dam, it was error to allow testimony of a mere prophecy made by a third person to the witness several years before the action that the dam if constructed higher would ruin plaintiff's land. *McLeod v. Miller & Lux*, 40 Nev. 447; 153 P. 566; 167 P. 27.

IX. PUBLIC WATER SUPPLY

(A) DOMESTIC AND MUNICIPAL PURPOSES

20. Water rents and other charges.

A provision in the franchise company that free water should be supplied a county courthouse, and that the water company might furnish water for municipal and irrigation purposes and charge rental therefor, did not obligate the water company to furnish free water for use in sprinkling

the courthouse grounds. *Ely Water Co. v. White Pine County*, 38 Nev. 472; 151 P. 335; L. R. A. 1916D, 431.

The franchise of a water company provided that it should furnish free water for the use of a courthouse and certain other public buildings, and also that it might furnish water for municipal and irrigation purposes and charge rental therefor. The county authorities used the water furnished by the water company to sprinkle the courthouse grounds, but refused to pay therefor, on the ground that the franchise failed to fix an applicable rate. The rate charged for water for sprinkling purposes in the city was based upon lots as laid out on the official town plat, but the courthouse grounds were not so laid out. Held, that the water company was entitled to recover from the city the fair value of the water furnished. *Id.*

Evidence considered, and held insufficient to warrant a finding that rates fixed by a state commission to be charged by a water company were confiscating in advance of an actual test. *Goldfield Con. Water Co. v. Public Service Comm.*, 236 F. 980.

Unless in exceptional cases, depreciation in value of the property of a water company already accrued should not be charged upon future consumers. *Id.*

What a water company is entitled to demand in order that it may have a just compensation is a fair return upon the reasonable value of the property at the time it is being used for the public service, provided no more is exacted than its services are reasonably worth. *Goldfield Con. Water Co. v. Public Service Comm.*, 236 F. 979.

The original cost of the plant of a water company, the value fixed for taxation, the aggregate value of the company's issued bonds and capital stock, and the amount honestly and prudently invested, cannot any one of them alone be regarded as invariably or necessarily equivalent to present value for rate-fixing purposes; the fact that the plant is in operation and circumstances and conditions which indicate the future increase, diminution, or entire loss of its business are also factors to be considered. *Id.*

(B) IRRIGATION AND OTHER AGRICULTURAL PURPOSES

21. Nature and extent of right to water.

An owner of land on which surplus or waste waters exist is the owner of the waters, and may consent to others acquiring rights therein on his property and in ditches thereon to convey the waters to the lands of the others. *Bidleman v. Short*, 38 Nev. 467; 150 P. 834.

22. Actions to establish and protect water rights.

Injunction will lie to restrain the state engineer and a district water commissioner from unjustly and unreasonably depriving appropriators of water for irrigating their

lands; no redress being afforded the appropriators by the water law of 1913 (Stats. 1913, c. 140), inasmuch as the district court cannot take cognizance of the proceedings of the state engineer by way of appeal as therein prescribed, since the constitution restricts the appellate jurisdiction of such court to cases appealed from justice courts and municipal tribunals. *Knox v. Kearney*, 37 Nev. 393; 142 P. 526.

Evidence in an action to enjoin defendant's use of a ditch to conduct water to his ranch, in which defendant claimed an irrevocable license to use the ditch, held to justify a judgment for the plaintiff. *Gault v. Grose*, 39 Nev. 274; 155 P. 1098.

23. Sale of water and supply and use for irrigation.

Where a consumer of water for irrigation obtained the water from a company engaged in the business of diverting water from a natural stream and delivering the same to lands by means of a canal for a valuable consideration, and the company delivered to the consumer annually for several years a specified quantity of water, all used to irrigate the land of the consumer, who improved his property on the faith that the company would continue to deliver water, he obtained an implied contract to obtain water from the company for a reasonable compensation. *Prosole v. Steamboat Canal Co.*, 37 Nev. 154; 140 P. 720; 144 P. 744.

Whether or not the appellant, as owner of the canal, has a property interest in the right to furnish water, is not an issue in the case at bar, and observations made in the opinion are not to be considered decisive of this question. *Id.*

24. Injuries incident to supply or use.

Where several parties, acting independently, contribute to the injury, the party injured may proceed severally against the parties contributing to the injury. *Ramelli v. Sorgi*, 38 Nev. 552; 149 P. 71.

The fact that waste water from defendant's lands flowed without interruption across the lands of a third party, would not affect the right of plaintiff to enjoin defendant from flowing such waste water upon plaintiff's lands. *Id.*

25. Injuries incident to supply or use—Overflow or leakage.

The injury to plaintiff's premises from water being from percolation near the surface, regardless of defendant's irrigation ditch, and from overflow caused by plaintiff decreasing the size of the ditch and lowering its banks, defendant is not liable. *Malmstrom v. People's D. Co.*, 37 Nev. 469; 143 P. 238.

26. Injuries incident to supply or use—Actions.

In a suit for partial loss of growing crops alleged to have been occasioned by defendant's refusal to deliver to plaintiffs the amount of water for irrigation which they claimed, and to establish their rights, evi-

dence held not to establish plaintiffs' contentions as to the amount of water claimed, and to necessitate a reversal of judgment in their favor which awarded damages and provided for an injunction. *Pincolini v. Steamboat Canal Co.*, 41 Nev. 37; 167 P. 314.

Where defendants have gone on the lands of plaintiffs and cut and interfered with ditches thereon and asserted right so to do and to divert surplus or waste waters of plaintiffs and threatened to continue so to do, plaintiffs were entitled to relief by injunction. *Bidleman v. Short*, 38 Nev. 467; 150 P. 834.

27. Offenses incident to supply or use of water.

The mere opening, breaking into, tapping or connecting with any pipe, flume, ditch, or reservoir does not constitute crime, defined by crimes and punishments act, sec. 468, subd. 1 (Rev. Laws, 6733), the taking or removing therefrom of water belonging to another or allowing the same to be taken being essential element of the crime. In *Re Schultz*, 42 Nev. 254; 174 P. 431.

See Constitutional Law, 20, 26, 42, 45; Eminent Domain, 1.

WEAPONS

1. Statutes—Construction—Exceptions.

1. Statutes—Construction—Exceptions.

The act (Stats. 1903, c. 114) regulating and prohibiting the carrying of concealed weapons declares (section 4) that it shall not apply to peace officers in the discharge of their duties, nor to persons acting or engaged in the business of common carriers in the state, or to persons traveling through the state. Held, that the words "acting or engaged in the business of common carriers" did not limit the exemption to persons engaged "in common carrying," but that the exemption included persons acting or engaged in other business of common carriers than the actual transportation of freight or passengers, such as the guarding of trains, depots, or property of common carriers, and that watchmen employed by a railroad company, though not engaged in train service, were within the exception. *Ex Parte Davis*, 33 Nev. 309; 110 P. 1131.

WEIGHT OF EVIDENCE

See Criminal Law, 48.

WIFE ABANDONMENT

See Extradition, 1.

WIFE AND CHILD

See Judgment, 34.

WIFE'S INTEREST

See Homestead, 2, 3.

WIFE'S INTEREST IN COMMUNITY PROPERTY

See Husband and Wife, 3; Taxation, 20.

WIFE'S RIGHT TO ACQUIRE DOMICILE

See Domicile, 2.

WIFE'S SEPARATE PROPERTY

See Divorce, 22.

WILLS

III. CONTRACTS TO DEVISE OR BEQUEATH.

1. Making, requisites, and validity.

IV. REQUISITES AND VALIDITY.

(C) Execution.

2. Signature or subscription by or for testator.

V. PROBATE, ESTABLISHMENT, AND ANNULMENT.

(H) Evidence.

3. Weight and sufficiency.

VI. CONSTRUCTION.

(A) General Rules.

4. Intention of testator.
5. Intention of testator—Situation of testator and circumstances of making of will.
6. Language of instrument—Technical words.

(D) Description of Property.

7. Interest, income or produce of personal property.
8. Residuary clause—General residue.

VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.

(C) Advancements, Ademption, Satisfaction and Lapse.

9. Lapse—Death, disqualification, or failure of devisee or legatee.

III. CONTRACTS TO DEVISE OR BEQUEATH

1. Making, requisites, and validity.

In a suit to specifically enforce a contract that plaintiff who was adopted by testatrix and her husband should inherit whatever property they might die possessed of, evidence held insufficient to show more than the adoption of plaintiff, and not to establish the agreement as to the inheriting of property. *Forsyth v. Heward*, 41 Nev. 306; 170 P. 21.

IV. REQUISITES AND VALIDITY

(C) EXECUTION

2. Signature or subscription by or for testator.

Under Stats. 1915, c. 35, providing that no will shall be valid unless it be in writing and signed by the testator or by some person in his presence and by his express direction, a signature to a will by having another aid or steady the hand of the testa-

tor, at his request, is valid, if the testator possessed testamentary capacity, was acting under no undue influence, and realized the force and effect of the provisions of the will he was signing. In *Re Gordon*, 40 Nev. 300; 161 P. 717.

V. PROBATE, ESTABLISHMENT, AND ANNULMENT

(H) EVIDENCE

3. Weight and sufficiency.

Evidence in a will contest, held to sustain a finding that, when the testator's aided signature was made, he did not know that the instrument he was signing contained provisions as to the distribution of his estate which he had formerly discussed with the draftsman, or ordered him to prepare. *Id.*

VI. CONSTRUCTION

(A) GENERAL RULES

4. Intention of testator.

The cardinal rule in the interpretation of wills is to ascertain the intention of the testator. In *Re Hartung's Estate*, 39 Nev. 200; 155 P. 353.

5. Intention of testator—Situation of testator and circumstances of making of will.

Although the intention of the testator must appear from a perusal of the will, although not necessarily articulated in formal language, the court may take into consideration, in determining such intention, the subject-matter, chief aim of the testator, and all the surrounding circumstances. In *Re Hartung*, 40 Nev. 263; 160 P. 782; 161 P. 715.

6. Language of instrument—Technical words.

The word "bequeath" is generally used to express a gift of personalty made in a last will, and the word "devise" is a term generally used to express a gift of realty made by will. In *Re Estate of Lewis*, 39 Nev. 445; 159 P. 961.

(D) DESCRIPTION OF PROPERTY

7. Interest, income, or produce of personal property.

Under a will devising the residue of an estate to the Independent Order of Odd Fellows, the income therefrom to be paid over by the executors and trustees annually, if within five years from testator's death the order established a home for orphans in a certain place, to be known by a certain name, with devise of the estate over in the contingency that the order should not accept such condition, it was the testator's intention that the order, if it established such a home within such time, should receive only the income of the estate. In *Re Hartung's Estate*, 39 Nev. 200; 155 P. 353.

Under such will, in which the devise was unlimited as to time, the rule that a gift of the income of a fund without limit as to time will pass the fund itself did not apply, as it was the testator's intention, in case

the order did not build the home, to create an active trust, the trustees to manage the corpus of the trust fund and pay over the proceeds thereof annually to the order as long as it maintained the home. *Id.*

8. Residuary clause—General residue.

Under such will, the order was not a "residuary legatee," as the term "residuary bequest" means that the residue of an estate is bequeathed to a person absolutely, and as there can be but one "residue" of an estate, meaning what is left after the payment of the debts and general legacies and the satisfaction of other specific gifts. *Id.*

A residuary bequest contingent in terms generally carries the intermediate income, which is not disposed of, but accumulates. *Id.*

VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES

(C) ADVANCEMENTS, ADEMPITION, SATISFACTION AND LAPSE

9. Lapse—Death, disqualification, or failure of devisee or legatee.

Under Rev. Laws, 6219, continued practically in the form in which it was enacted in 1862, providing that when any estate shall be devised to any relative of the testator and the devisee shall die before the testator, leaving lineal descendants, they shall take such estate as the devisee would have taken had he survived the testator, and in view of the specific use of the terms "devisees," "legacies," etc., in section 6205, and the specific and correct use of the words "devisee" and "devisor" in section 6220, and in the absence of an interchangeable or indiscriminate use of such terms in the statute, the words "devisee" and "devise" are not to be given the scope of "legatee" and "legacy," and do not comprehend the disposition of personal property; so that, where a will gave and bequeathed the residue of all the property of the testatrix to a relative and her daughter, and the devisee predeceased the testatrix, the daughter was entitled to all the residue of the realty, and to one-half the residue of the personal property, but as to the other half of the residue of the personal property, the testatrix died intestate. *In Re Estate of Lewis*, 39 Nev. 445; 159 P. 961.

"WILFUL" OR "WANTON"

See Negligence, 12.

WISDOM OR POLICY OF LEGISLATION

See Constitutional Law, 24.

WITHDRAWAL OF PLEA

See Criminal Law, 102.

WITNESS AGAINST SELF

See Criminal Law, 27.

WITNESSES

II. COMPETENCY.

(A) Capacity and Qualifications.

1. Husband and wife—Consent of husband or wife to admission of testimony by other.

(C) Testimony of Parties or Persons Interested.

2. Parties and other persons whose testimony is excluded.
3. Parties as against whom testimony is excluded.
4. Subject-matter of testimony—Transactions with persons since deceased.

III. EXAMINATION.

(A) Taking Testimony.

5. Questions assuming facts.
6. Leading questions.
7. Use of document, etc., to explain testimony.

(B) Cross-Examination and Reexamination.

8. Scope and extent of cross-examination.
9. Limitation of cross-examination to subjects of direct examination.
10. Cross-examination of witness to character of party.
11. Redirect examination—Scope and extent.

(C) Privilege of Witness.

12. Privilege of accused.
13. Waiver of privilege.

IV. CREDIBILITY, IMPEACHMENT, CONTRADICTION, AND CORROBORATION.

(A) In General.

14. Falsus in uno, falsus in omnibus.

(B) Character and Conduct of Witness.

15. Particular traits of character or habits.

(C) Interest and Bias of Witness.

16. Cross-examination to show interest or bias.

(D) Inconsistent Statements by Witness.

17. Inconsistency of statements as grounds of impeachment.
18. Oral statements and examination of impeaching witnesses.
19. Former testimony of witness.

II. COMPETENCY

(A) CAPACITY AND QUALIFICATIONS

1. Husband and wife—Consent of husband or wife to admission of testimony by other.

Under Rev. Laws, 5424, providing that a wife cannot testify for or against her husband "without his consent," a wife was competent to testify for her husband in his action for criminal conversation, where the husband and wife had each consented in open court that the other might testify to anything existing between them having a bearing on the case. *Rehling v. Brainard*, 38 Nev. 16; 144 P. 167; Ann. Cas. 1917C, 656.

(C) TESTIMONY OF PARTIES OR PERSONS INTERESTED

2. Parties and other persons whose testimony is excluded.

Where one of the parties to a transaction was dead, a witness, who was really an adversary party to decedent, is incompetent to testify. *Johnson v. Garner*, 233 F. 759.

Under Rev. Laws Nev. 5419, declaring no person shall be allowed to testify when the other party to the transaction is dead, one party to an arrangement with a corporation cannot testify thereto after death of the corporate representative, for such representative was the other party to the transaction. *Bright v. Virginia and Gold Hill Water Co.*, 254 F. 175.

3. Parties as against whom testimony is excluded.

In a suit to declare and enforce a resulting trust as to corporate stock alleged to be held by defendant as trustee for plaintiff's testator, defendant was precluded by Rev. Laws, 5419, from testifying as to any transactions between himself and testator. *Torp v. Clemmons*, 37 Nev. 474; 142 P. 1115.

4. Subject-matter of testimony—Transactions with persons since deceased.

Rev. Laws, 5419, disqualifying a witness to testify to any transactions between himself and a person since deceased, does not disqualify the witness to testify as to matters brought out by opposing witnesses outside the transaction and out of the presence and hearing of the person who had since died. *Id.*

Under Rev. Laws, 5419, declaring that no person shall be allowed to testify when the other party to the transaction is dead, or when the opposite party to the action or the person for whose immediate benefit the action or proceeding is prosecuted or defended, is the representative of a deceased person when the facts to be proven transpired before the death of such deceased person, testimony of the mother of plaintiff who was adopted by the testatrix and her husband, in a suit against the testatrix's executor to enforce specific performance of alleged contracts by which plaintiff was to inherit any property of which testatrix and her husband might die possessed, it appearing that testatrix's husband conveyed all his property to her, as to matters relative to the alleged agreement transpiring before the death of the testatrix, all of which tended to establish the alleged contract of adoption, is inadmissible. *Forsyth v. Heward*, 41 Nev. 305; 170 P. 21.

In such case testimony by plaintiff's own father concerning acts and conduct of testatrix and her husband when they went to his house to get plaintiff is also inadmissible under Rev. Laws, 5419; for it would be a mere evasion to allow testimony as to acts when testimony as to transactions with deceased persons is inadmissible. *Id.*

III. EXAMINATION

(A) TAKING TESTIMONY

5. Questions assuming facts.

The rule that an interrogation assuming the existence of a fact not in evidence is not admissible does not prevent the answering of questions testing the knowledge of general reputation of a character witness by inquiry as to his having heard of specific acts. *State v. Sella*, 41 Nev. 113; 168 P. 278.

6. Leading questions.

The allowance of leading questions is a matter principally within the discretion of the trial court. *Anderson v. Berrum*, 36 Nev. 463; 136 P. 973.

7. Use of document, etc., to explain testimony.

In a homicide case, a projectoscope was properly used to illustrate the testimony of experts. *State v. Kuhl*, 42 Nev. 185; 175 P. 190.

(B) CROSS-EXAMINATION AND REEXAMINATION

8. Scope and extent of cross-examination.

A conductor of defendant who in an action for injury to a passenger from derailment of a train has testified for the carrier that, immediately after the accident, he made an investigation of the railroad bed, cars, etc., and was unable to come to a conclusion as to the cause of the accident, may, to test his knowledge as to how thorough an examination he made, be asked as to whether or not the smoker was more broken or its occupants more frequently injured than in any other cars. *Sherman v. S. P. Co.*, 33 Nev. 385; 111 P. 416; 115 P. 909; Ann. Cas. 1914A, 217.

The cross-examination must be limited to matters stated in the examination in chief and questions to test the accuracy, veracity, and credibility of the witness, though it is, of course, competent to call out anything tending to modify or rebut the conclusion or inference resulting from the facts stated by the witness in his direct examination. *Anderson v. Berrum*, 36 Nev. 463; 136 P. 973.

The rule limiting the cross-examination to matters stated in the examination in chief does not prevent the cross-examining party from making the witness his own after the adverse party has concluded his case in chief, nor does it prevent the court from allowing a rigid examination if the witness be hostile. *Id.*

In a personal injury action, wherein one element of plaintiff's damages was inability to work, exclusion of evidence as to the name of a person from whom he borrowed a certain sum of money was erroneous. *Zelavin v. Tonopah Belmont*, 39 Nev. 1; 149 P. 188.

9. Limitation of cross-examination to subjects of direct examination.

The roadmaster who, in an action against a carrier for injury to a passenger from

derailment of a train, had testified for defendant as to the perfect condition of the road, and gone into detail with reference to the amount of work done on the road-bed, the material used, and when the rails were put down, was properly allowed on cross-examination to be asked why it was necessary to put heavier rails down in a certain year, to which he answered that it was on account of the increase of weight of the rolling stock and the loads; plaintiff who contended the improvements had not kept pace with increase of business, having the right, if he could, to shake witness's testimony by cross-examination so long as he confined it to the subject-matter brought out in the direct examination. *Sherman v. S. P. Co.*, 33 Nev. 385; 111 P. 416; 115 P. 1009; Ann. Cas. 1914A, 217.

10. Cross-examination of witness to character of party.

In prosecution for murder, wherein the accused claimed self-defense, witnesses as to character of deceased for peace and quiet were properly cross-examined by questions asking whether they knew certain persons and remembered whether the deceased had assaulted them; the form of the questions being unobjectionable. *State v. Sella*, 41 Nev. 114; 168 P. 278.

In prosecution for homicide, where defendant introduced evidence of deceased's bad character, and the state introduced witnesses in rebuttal thereof, defendant should have been allowed to cross-examine the witnesses as to the particular facts upon which they based their statement of reputation, and even to inquire whether they had heard of specific brawls in which deceased had engaged. *State v. Sella*, 41 Nev. 113; 168 P. 278.

11. Redirect examination—Scope and extent.

Where plaintiff was cross-examined as to why, in his former suit, he did not claim as great damage as in the present one, those questions were proper, and will not authorize his attorney on his redirect examination in asking him leading questions suggesting the answer. *Anderson v. Berrum*, 36 Nev. 463; 136 P. 973.

On a murder trial, where, on cross-examination of a witness who had been previously convicted as joint principal in the crime on a separate trial, the defense asked him whether he had talked with the county officers, including the district attorney, it was a proper exercise of the court's discretion to allow the state on redirect examination to ask the witness whether he had not been informed that no clemency would be extended to him for testifying in the case, since the inference that offers of clemency had been made might have arisen from such previous question by the defense. *State v. Tranmer*, 39 Nev. 142; 154 P. 80.

(C) PRIVILEGE OF WITNESS

12. Privilege of accused.

Under Rev. Laws, 7451, a person charged

with larceny may refuse, on the ground of incrimination, to testify at the trial of an accomplice against whom a separate information has been filed. *State v. District Court*, 42 Nev. 218; 174 P. 1023.

13. Waiver of privilege.

When accused waives his constitutional privilege not to testify, and becomes a witness for himself, he cannot testify to that part of the transaction favorable to himself and claim his privilege as to the remainder. *State v. Urle*, 35 Nev. 268; 129 P. 305.

IV. CREDIBILITY, IMPEACHMENT, CONTRADICTION, AND CORROBORATION

(A) IN GENERAL

14. Falsus in uno, falsus in omnibus.

If the jury believe from the evidence that a witness has wilfully sworn falsely as to the material matters, they are at liberty to disregard his entire testimony, except as corroborated by other credible evidence. *Zelavin v. Tonopah Belmont*, 39 Nev. 2; 149 P. 188.

(B) CHARACTER AND CONDUCT OF WITNESS

15. Particular traits of character or habits.

It may be proper to offer evidence to show that at a particular time a witness was in such an intoxicated state that he could not comprehend what transpired, but it does not follow that a hard drinker is untruthful. *State v. Milosovich*, 42 Nev. 263; 175 P. 139.

(C) INTEREST AND BIAS OF WITNESS

16. Cross-examination to show interest or bias.

Where accused was charged with killing another with a syphon bottle, it was error to overrule objection to a question asked accused's witness on cross-examination, as to whether another girl had not said that accused "asked us girls not to say anything about the syphon bottle," although asked for purpose of showing bias of the witness, since defendant should have first been connected with such statement. *State v. Milosovich*, 42 Nev. 264; 175 P. 139.

(D) INCONSISTENT STATEMENTS BY WITNESS

17. Inconsistency of statements as grounds of impeachment.

One accused of crime who takes the stand as a witness cannot be impeached by proof of a confession which would be inadmissible as direct evidence because made while under arrest, and not shown to have been voluntary. *State v. Wilson*, 39 Nev. 298; 156 P. 929.

18. Oral statements and examination of impeaching witnesses.

If statement on a former occasion was brought home to witness on cross-examination, with elements of impeachment incorporated therein, as to time, place, and party

to whom made, which she denied, it was proper for state, on rebuttal, to present party to whom former statement was made, and to propound, after fixing time and place, exact language of witness sought to be impeached. *State v. Kuhl*, 42 Nev. 185; 175 P. 190.

19. Former testimony of witness.

Where the testimony of a witness at a coroner's inquest was reduced to writing in accordance with Rev. Laws, Nev., sec. 7550, but the record was not read by or to the witness, and was not signed by him, a transcript thereof is not admissible to impeach the testimony of such witness in a subsequent case growing out of the death investigated by the coroner. *New York Life Ins. Co. v. Neasham*, 250 F. 787; 163 C. C. A. 119.

See Criminal Law, 43; Evidence, 18, 21, 22, 25.

WOMEN AS GRAND JURORS

See Grand Jury, 2.

WORDS LIBELOUS PER SE

See Libel and Slander, 1, 2, 4, 6.

WORDS OR EXPRESSIONS USED

See Libel and Slander, 6.

WORDS, PHRASES AND DEFINITIONS

Accomplices.

One who feigned participation in a larceny of ore which he was employed to watch, in order to assist in the detection of the accused, was not an "accomplice," so as to make his testimony subject to the rules regarding accomplices' testimony. *State v. Smith*, 33 Nev. 438.

Where it does not appear that a person knowingly, voluntarily, and with common intent with the alleged principal offender, united in the commission of the crime charged, such person is not an "accomplice." In *Re Bowman and Best*, 38 Nev. 484.

Acting or Engaged in the Business of Common Carriers.

The act (Stats. 1903, c. 114) regulating and prohibiting the carrying of concealed weapons declares (section 4) that it shall not apply to peace officers in the discharge of their duties nor to persons acting or engaged in the business of common carriers in the state, or to persons traveling through the state. Held, that the words "acting or engaged in the business of common carriers" did not limit the exemption to persons engaged "in common carrying," but that the exemption included persons acting or engaged in other business of common carriers than actual transportation of freight or passengers, such as the guarding of trains, depots or property of common carriers,

and that watchmen employed by a railroad company, though not engaged in train service, were within the exception. *Ex Parte Davis*, 33 Nev. 309.

Actual Bias.

Rev. Laws, 7145, 7146, allow a challenge for cause on the general ground that a juror is disqualified for want of any qualification prescribed by law, and on the particular ground that he is disqualified from serving in the action on trial. Section 7147 allows a challenge for such a state of mind on the part of the juror as leads to a just inference that he will not act with entire impartiality, designated "actual bias." Section 7150 provides that in a challenge for actual bias it must be alleged that the juror is biased against the party challenging him, but that no one shall be disqualified by reason of a formed or expressed opinion on the matter in issue, provided that it appears to the court that he can act impartially in the trial. Held, that a challenge "for actual bias," not stating any ground upon which the challenge rested or any reason on which it was made by the party against whom the jury was biased, was in form insufficient. *State v. Salgado*, 38 Nev. 64.

Adverse User.

To constitute the "adverse user" which is essential to the acquisition of an estate by prescription, it is essential that the possession be by actual, open, and notorious occupation, hostile to the title of the owner of the servient estate, and that it be under an exclusive claim of right, and be continuous and uninterrupted for five years prior to the commencement of the action. *Howard v. Wright*, 38 Nev. 25.

Agent.

See "Agent or Other Head."

Agent or Other Head.

Comp. Laws, 3124, provides that service of process against a foreign corporation doing business within the state may be made on an agent, cashier, secretary, president, or other head thereof. Section 899 provides that every foreign corporation doing business in the state shall appoint an agent upon whom all legal process may also be served. In an action to enforce a mechanic's lien against a foreign corporation, service was made on its manager, who had not been appointed its agent therefor. Held, that such service was valid under section 3124, which was in force at the passage of section 899, since the manager of a corporation is such an agent or "other head" of a company as is contemplated by the statute; an "agent" being one who has authority to act for another. *Daly v. Lahontan Mines Co.*, 39 Nev. 14.

Aggrieved.

Under the provisions of Rev. Laws, 5327, providing that "any party aggrieved may appeal," etc., the word "aggrieved" refers to a substantial grievance. The imposition of some injustice, or illegal obligation or

burden, or the denial of some equitable or legal right, would constitute a grievance in the contemplation of the statute. *Esmeralda County v. Wildes*, 36 Nev. 526.

Amendment.

The provision of Const. art. 4, sec. 17, that no law shall be revised or amended by reference to its title only, does not render invalid the provision of Stats. 1917, c. 197, that electors in the military service of the United States may vote in accordance with Stats. 1899, c. 94, which was repealed by Stats. 1913, c. 284; revival by title not being prohibited; for an "amendment" is an alteration effecting a change in the draft, or form, or substance, of a law already enacted, or of a bill proposed for enactment, but, when the legislative body attempts to revise, it thereby assumes to make additions or changes or corrections to alter or reform something then in force and effect, and "revision" in a legislative sense applies only to a measure, bill, or law then having existence, life, and force, and cannot, in the nature of things, apply to a nullified or repealed act; and the term "revive," as applied to legislative proceedings, signifies the reconference of validity, force, and effect, at least the reconference of such validity, force, and effect as the revived measure, law, or bill formerly possessed. *Maclean v. Brodigan*, 41 Nev. 468.

Amount.

Under revenue act of 1915 (Stats. 1915, c. 178), sec. 3, requiring persons disposing of liquor "in less quantities than a quart," in a city, to take out a county license from the sheriff; section 6, requiring persons selling liquor either at retail or wholesale, in addition to other licenses, to take out a state license, section 8, providing for the sheriff, as ex officio collector, issuing and collecting for a retail liquor license to one engaged in selling liquor in quantities less than five gallons, section 9, requiring one selling liquor in quantities in excess of five gallons to take out a wholesale state liquor license, section 10, providing that monthly the sheriff shall pay to the county treasurer "all" money received by him for state liquor licenses, "in like manner and form as is hereinafter provided for the payment of county license moneys," and that in a county having a city therein he shall pay to it one-half of the "amount" of license moneys collected for disposition of liquors in less quantities than a quart, within its limits, half of the amount from state as well as county license for such disposition in quantities less than a quart is to be paid to the city, and the balance only to the county treasurer, so that such half payable to the city is not included in "all moneys received" by the county treasurer for state liquor licenses "in accordance with the provisions of this act," for which section 11 requires him to account to the state treasurer, the word "amount," in section 10, referring to the total of two sums (citing Words and Phrases, Second Series, "Amount"). *State v. Hill*, 40 Nev. 110.

Answer.

Under Rev. Laws, 5236, providing that, in an action upon contract for the recovery of money or damages only, if no answer has been filed within the time specified in the summons or such further time as may have been granted, the clerk on plaintiff's application shall enter defendant's default and immediately thereafter enter judgment against the defendant, and that the word "answer" as used therein shall include any pleading that raises an issue of law or fact, whether it be by general or special appearance, while the filing of a demurrer is equivalent to the filing of an answer in preventing a default, where a demurrer to the complaint was sustained and a demurrer to an amended complaint was overruled, the demurrers had served their purpose and had no further effect, and upon defendant's failure to answer within the time allowed by the court the clerk could enter judgment by default. *Eaden v. May*, 36 Nev. 611.

Any Part.

A lease authorizing the lessee to purchase "any part" of certain premises held too indefinite to be aided by parol evidence, and to afford the lessee no defense in a forcible entry and detainer action. *De Remer v. Anderson*, 41 Nev. 287.

Apex.

Within Rev. Stats. U. S. 2322, giving extralateral rights as to veins the tops or apexes of which are within the surface lines of the located claim, the crest of a vein in the form of anticlinal fold is the apex; a terminal edge not being necessary for an apex. *Jim Butler Co. v. West End Co.*, 39 Nev. 375.

Appropriator.

One who obtains water for irrigation from a water company, diverting water from a stream into an artificial waterway for sale, is an appropriator of water within the rule that a prior appropriation is a prior right, and the company is but his agent, and the right of user is equivalent to an easement in the artificial way of the company to the extent of the amount of water delivered by the company, which right is contingent only on the acts of the actual appropriator in paying a reasonable compensation for the water obtained. *Prosrole v. Steamboat Canal Co.*, 37 Nev. 154.

Assault.

In a prosecution for murder, evidence held not to show that defendant made the first assault upon deceased; an "assault" requiring an attempt to carry the intent to assault into execution by an overt act. *State v. Huber*, 38 Nev. 253.

Rev. Laws, 6412, defines an assault as an unlawful attempt, coupled with the present ability, to commit a violent injury. Section 7050 provides that the indictment must contain a statement of the acts constituting the offense, in ordinary language so that a person of common understanding would

know what was intended. Held, that an information, alleging that accused on a certain day, "he, having the ability then and there so to do, did wilfully, unlawfully, and feloniously" assault another, sufficiently alleged present ability. *State v. MacKinnon*, 41 Nev. 182.

Assent.

An indictment charging the accused with assenting to the receipt of bank deposits was framed under the act of March 13, 1909 (Stats. 1909, c. 92), which by section 1 makes it a crime for a bank officer to receive deposits or to assent to the receipt of deposits when the bank is known to be insolvent, and by section 2 provides that any officer of an incorporated bank, having authority to close the bank or to prevent the receipt of deposits, who shall not exercise such authority when he knows that the bank is insolvent, shall be deemed to have assented to the receipts of deposits. The indictment contained no allegations that the accused had any authority to close the bank, or to prevent the receipt of deposits, or that the accused personally received deposits knowing the bank to be insolvent. Held, that, under section 2, considered with the direct definition of section 1 as to the offense of assenting to the receipt of deposits, the "assent" required by the statute implied permission, and presupposed some inherent power to withhold assent. *Ex Parte Smith*, 33 Nev. 466.

Assessment Roll.

General revenue act (Rev. Laws, 3623), section 7, provides that the board of county commissioners of each county shall cause to be prepared suitable books for the use of the assessor, in which he shall enter his tax list and assessment roll as thereafter provided, and in that list and roll shall be assessed and included all taxes levied by authority of law for county purposes, the book to contain suitable printed heads and be ruled to conform with the form of the assessment roll as provided by the act. Section 4902 declares that each county in each district in the state shall contribute annually to the fund required to pay the salary of the district judge its proportionate share of the money necessary to pay such salary, based on the assessment roll of each county for the previous year. Held, that the term "assessment roll," as used in section 4902, means the whole roll for the assessment of taxes, including not only the assessment of real and personal property mentioned in Rev. Laws, 3623, but the assessment of the proceeds of mines mentioned in Rev. Laws, 3696, as well. *Esmeralda Co. v. Mineral Co.*, 37 Nev. 180.

Attempt to Commit Crime.

An act done with intent to commit a crime, and tending, but failing, to accomplish it, is an attempt to commit that crime (citing 1 Words and Phrases, "Attempt to Commit Crime"). *State v. Huber*, 38 Nev. 253.

Belongs To.

See "Held."

Bequeath.

The word "bequeath" is generally used to express a gift of personalty made in a last will, and the word "devise" is a term generally used to express a gift of realty made by will. In *Re Estate of Lewis*, 39 Nev. 445.

Bovine.

The term "bovine" is taken from the Latin "bos," which means cow or bull. "Neat cattle" are animals belonging to the genus "bos," term not embracing horses, sheep, goats, or swine. "Cattle," as generally used in Western America or the western states, means "neat cattle" straight-backed, domesticated animals of the bovine genus regardless of sex, and is not generally, but may be, taken to mean calves, or animals younger than yearlings. It includes cows, bulls, and steers, but not horses, mares, geldings, colts, mules, jacks, or jennies, goats, hogs, sheep, shoats, or pigs. *State v. District Court*, 42 Nev. 218.

Business.

A bona-fide social club, which disposes, at its clubhouse, of liquors to members and guests at a fixed charge as an incident to the general purposes of the club, the profit on sales going to pay the general expenses of the organization, is not required to take out a license by Rev. Laws, 3777-3785, approved March 15, 1905, which provides for a license upon the business of disposing of intoxicating liquors; the term "business" in such statute meaning business in the trade or commercial sense. *State v. University Club*, 35 Nev. 475.

Bite.

See "Slit."

Candidate.

The primary election law (Stats. 1913, c. 282), sec. 8, provides that every candidate for nomination or election to a state office shall, five days before and fifteen days after the election at which he was a candidate, file with the secretary of state a sworn statement setting forth all the moneys contributed by him to aid his nomination or election. Late in the last day for filing nomination papers M. and G. each filed his nomination paper for the Republican nomination for attorney-general and paid the filing fee. On the second day thereafter G. filed with the secretary of state his purported withdrawal from the nomination. About half an hour later M. filed his purported withdrawal, which it was held could not be accepted, because on G.'s withdrawal M. became the Republican nominee by operation of law. Held that, under such circumstance M. was not a candidate for the nomination for the office at a primary election, and his failure to file a statement of his primary election expenses was no objection to his right to have his name printed on the ballot. *State v. Brodigan*, 37 Nev. 488.

Cases at Law.

The penalty which a city under its charter (Stats. 1915, c. 184; Stats. 1917, c. 76).

may prescribe for violation of an ordinance being such that the offense under the definition of Rev. Laws, 6266, is a misdemeanor, the supreme court has no jurisdiction of appeal from conviction thereof, its appellate jurisdiction in criminal cases being by Const. art. 6, sec. 4, limited to felony, and it being immaterial that the case was transferred from the police court to the district court because the validity of the tax imposed by the ordinance was attacked; "cases at law" in which is involved the legality of a tax, of which the supreme court is given appellate jurisdiction, not including a criminal case. *City of Reno v. Dixon*, 42 Nev. 67.

Cash Value.

Stats. 1913, c. 134, creating a state tax commission with power to district the state geographically into assessment districts according to relative uniformity of land valuation, and establish minimum acreage valuations for the classes in each district, and that if, in the opinion of the commission, any tract, by reason of special conditions, would be improperly assessed by the application of the classified acreage valuations, the tract may be excluded therefrom and specially appraised, and providing that property shall be assessed at its true full "cash value," defined to mean the valuation in money which an investor in such character of property would be reasonably willing to pay therefor, implies that the commission may fix the valuation lower than the minimum of \$1.25 per acre, as fixed by Rev. Laws, 3838, and an owner feeling aggrieved on the ground that the minimum is too high, may appear before the commission and prove that the cash valuation is less than the minimum, and, on the commission so finding, they must make a deduction in the valuation accordingly, and to this extent section 3838 is superseded, but it still applies to county assessors making the original assessment. *State v. Tax Commission*, 38 Nev. 112.

Cattle.

See "Bovine."

Rev. Laws, 6640 (Crimes and Punishments Act, sec. 375), which defines the stealing of "cattle" as grand larceny, embraces cows, bulls, and steers of the domesticated bovine genus. *State v. District Court*, 42 Nev. 218.

Under Stats. 1913, c. 209, sec. 4, requiring charge to be clearly set forth, etc., an information, charging theft of "cattle," is not bad, the word "cattle," as used in Rev. Laws, 6440 (Crimes and Punishments Act, sec. 375), embracing cows, bulls, and steers of domesticated bovine genus. *Id.*

Citizen.

Quo warranto proceeding by the state, on the relation of a city against a foreign corporation, for failure to comply with its franchise, instituted by the attorney-general under Rev. Laws, 5656-5659, 5663, as to quo warranto, held, an action by the state, and not the city, preventing removal for diversity of citizenship; a state not being

a citizen. *State v. Reno Traction Co.*, 41 Nev. 405.

Claim Jumping.

The location on ground, knowing it to be excess ground, within the staked boundaries of another claim initiated prior thereto, because law governing manner of making location had not been complied with, so that location covers the workings of the prior locators, is what in mining circles is known as "claim jumping." *Nelson v. Smith*, 42 Nev. 302.

Contingent Claim.

The obligation of a surety on a guardian's bond, being a subsisting one, is not a "contingent claim" referred to in Rev. Laws, 6057, providing for payment into court of amount that would be payable if the whole were established as absolute. *Pruett v. Caddigan*, 42 Nev. 329.

Contributed.

A complaint, alleging that plaintiff "contributed" money to the erection of a building, does not allege a loan. *Guisti v. Guisti*, 41 Nev. 349.

Creditor.

An unrecorded bill of sale of undelivered personalty, executed by a deceased, is not void as to an order of court setting aside a monthly allowance to wife of deceased, the wife not being a "creditor" within Rev. Laws, 1078 (Comp. Laws, 2703), making sales and assignments of personalty without delivery fraudulent as to creditors. *Guisti v. Guisti*, 41 Nev. 349.

Deemed.

The title of the act of March 13, 1900 (Stats. 1909, c. 92), in addition to referring to the offenses declared, states that its purpose is to establish a rule of evidence in connection therewith. Section 2 makes the failure of a bank within thirty days after the receipt of deposits prima facie evidence of the officers' knowledge of its insolvency, and in a previous part it is provided that any officer having authority to close the bank or to prevent the receipt of deposits, who does not exercise such authority, shall be "deemed" to have assented to the receipt of deposits. Held, that only the part of the section relating to the knowledge imputed from the bank's failure is evidential in character, while the word "deemed," as used in the section, means "adjudged," in the sense of constituting a crime, instead of a rule of evidence. *Ex Parte Smith*, 33 Nev. 466.

De Facto Officer.

One purporting to act as a member of a county central committee of a political party, and who held proxies of other members, is at least a de facto officer, although disqualified by Stats. 1913, c. 282, sec. 18, because the holder of an appointive public office; a "de facto officer" being one whose acts, though not those of a lawful officer, the law upon principles of policy and justice will hold valid, because of the circumstances under which he acts or for the

benefit of third persons. *State v. Harmon*, 38 Nev. 5.

Dependent and Neglected Children.

See "Reformatory."

Desertion.

Separation by consent of the parties is not "desertion," and will not be ground for divorce. *Albee v. Albee*, 38 Nev. 191.

When the husband gives up the domicile at one place and establishes another, and in good faith urges the wife to live with him there, her refusal to accept the invitation, if without sufficient reason, amounts to "desertion." *Roberson v. Roberson*, 41 Nev. 276.

Devise.

See "Bequeath"; "Devisee."

Devisee.

Under Rev. Laws, 6219, continued practically in the form in which it was enacted in 1862, providing that when any estate shall be devised to any relative of the testator and the devisee shall die before the testator, leaving lineal descendants, they shall take such estate as the devisee would have taken had he survived the testator, and in view of the specific use of the terms "devises," "legacies," etc., in section 6205, and the specific and correct use of the words "devisee" and "devisor" in section 6220, and in the absence of an interchangeable or indiscriminate use of such terms in the statute, the words "devisee" and "devise" are not to be given the scope of "legatee" and "legacy," and do not comprehend the disposition of personal property; so that, where a will gave and bequeathed the residue of all property of testatrix to a relative and her daughter and the devisee predeceased the testatrix, the daughter was entitled to all the residue of the realty, and to one-half the residue of the personal property, but as to the other half of the residue of the personal property, the testatrix died intestate. In *Re Estate of Lewis*, 39 Nev. 445.

Entire Contents.

Under a tariff fixing freight rates on ore at a valuation of not less than \$100 per ton, determined from the gross assay value of the entire contents according to the market price of the metal product at destination after deducting the charges for assay, smelting, and handling at the smelter, and then fixing the actual rate at certain figures based on the value per ton, ore on which the assay value per ton, exclusive of moisture, was \$57.88 as against \$63.96, per ton for dry ore was properly valued for the purpose of determining the freight rate at its valuation per ton including the moisture content; moisture being included in the words "entire contents." *M. S. M. Co. v. L. V. & T. R. R. Co.*, 36 Nev. 62.

Estate or Interest in Land.

The lessor's assignment of "all rents due and to become due under" a certain lease was not an assignment in itself of the lease, and did not create an estate or interest in

the lands within Rev. Laws, 1038, 1039, 1069, stating the requisites of an instrument affecting the estate or interest in lands and of recordation in order to constitute notice. *Washoe County Bank v. Campbell*, 41 Nev. 153.

Feloniously.

An information, substantially following the form of the statute, charging that the defendant wilfully, unlawfully, and feloniously took from a person certain goods and chattels of such person, was not defective because not specifically charging a taking with an intent to commit a larceny; the word "feloniously" being a sufficient averment of the intent necessary to constitute the offense. *State v. Switzer*, 38 Nev. 108.

Fee or Perquisite of the Office of District Judge.

Though a townsit trustee became such by virtue of his office as district judge, the compensation allowed under the statute for his services as trustee is not a fee or perquisite of the office of district judge within section 10, article 6, of the constitution, forbidding a judicial officer, other than justices of the peace or city recorders, from receiving to his own use any fees or perquisites of office. *Jennett v. Stevens*, 34 Nev. 128.

Force.

Where defendant administered poison to produce unconsciousness and took money from cash register in saloon of which unconscious person had charge, he was guilty of "robbery," defined by statute to be unlawful taking of personal property from person of another or in his presence against his will by means of force or violence or fear of injury, since the administration of the poison constituted "force." *State v. Snyder*, 41 Nev. 453.

Found.

The word "found," as used in section 22 of the divorce act, supra, is used in the same sense that it is used in other provisions of the civil practice act relative to the service of process, and means the county in which service of summons may be had personally upon the defendant. *Tiedemann v. Tiedemann*, 36 Nev. 494.

Fugitive from Justice.

Where alleged deserted wife by deposition admitted receipt of moneys from husband after date of the desertion and failure to support alleged in the indictment, returned in a foreign state, the husband was entitled to discharge, on writ of habeas corpus, from detention for extradition, since there was no crime as alleged, and he could not be a "fugitive from justice." *Ex Parte Twy-effort*, 42 Nev. 259.

Great Necessity or Emergency.

Rev. Laws, 978, providing that in cases of great necessity or emergency, the governing body of a town or city may, by unanimous vote and with the approval of the state board of revenue, authorize a temporary loan to meet such necessity or

emergency, does not authorize a city organized under a special charter, which as amended by Stats. 1907, cc. 29, 146, gave the trustees power to improve its streets and to issue bonds subject to the right of the voters to petition for a special election on the question, to make a temporary loan to pay for the paving of street intersections on its main street, since "great necessity or emergency" means something greatly out of the ordinary, which could not be met by the usual machinery of the government, immediately indispensable, and does not include what is merely essential in the sense of being convenient. *Chartz v. Carson City*, 39 Nev. 285.

Harbor and Protect.

Under Pen. Code Utah, sec. 4075, providing that persons who, after full knowledge that a felony has been committed, conceal it from the magistrate, or harbor or protect the person charged therewith or convicted thereof, are accessories, where petitioner for habeas corpus, after a third person in Utah procured certain bonds from another by false pretenses, induced the defrauded person to delay the institution of criminal proceedings against the third person for a few days, during which the latter left the State of Utah, petitioner was not an accessory after the fact to the crime, since the words "harbor and protect" of the statute imply more than mere withholding of knowledge as to the whereabouts of the party charged, and necessarily contemplate some affirmative act or acts of concealment or assistance rendered to the principal personally; mere words of inducement or persuasion intended to cause a third party to delay filing a criminal charge not being enough to bring the party within the statute. In *Re Overfield*, 30 Nev. 30.

Held.

The use of the expression "goes to" the wife in Rev. Laws, 2165, different from the expression "belongs to" the husband in sec. 2164, does not show an intention of the legislature that the interest of the wife in the community should vest only after the husband's death, in view of Const. art. 4, sec. 31, requiring laws to be passed defining the rights of the wife to property held in common with her husband, since "held" does not convey the idea of mere expectancy, but imports ownership. In *Re Williams*, 40 Nev. 241.

Held to Answer.

On resubmission of an indictment to the grand jury, accused was "held to answer" within Rev. Laws, 7003, giving a person so held the right to challenge the panel or an individual grand juror, in view of section 7003, providing for retention of custody of accused on resubmission. *State v. Bachman*, 41 Nev. 197.

Heretofore.

As used in the election laws of 1913 (Stats. 1913, c. 284, subc. 3, sec. 18), providing that an elector shall not be entitled

to vote at a primary election "unless he has heretofore designated to the registry agent his politics," the word "heretofore" relates to the time in which an elector may lawfully be registered for the primary election. *State v. Keith*, 37 Nev. 452.

Hotel.

See "Inn."

Including.

Under Comp. Laws, 345, authorizing a townsite trustee before issuing a deed of lots to receive for counsel fees, and for moneys expended in the acquisition of the title and for the administration of the trust, including reasonable charges for time and services while employed in such trust, not exceeding the sum of \$1 for each lot, the word "including" shows that the charges for time and services of the trustee were to be embraced within the maximum charge, which was also to be inclusive of counsel fees and for moneys expended in the acquisition of the title and the administration of the trust. *Jennett v. Stevens*, 34 Nev. 128.

Indemnity.

Under Rev. Laws, 5652, providing that no contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor acceptance of any insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute a defense to an action for personal injuries or death, a release of an employer from liability for personal injuries, damaging an employee in the sum of about \$1,200, in consideration of the payment of \$36, did not prevent a recovery of such damages, since the statute invalidates defenses based, not only on contracts made to cover future injuries, but defenses based upon acceptance of insurance, relief benefit, or indemnity by a person already injured, and the word "indemnity" means protection or exemption from loss or damage, past or to come, or immunity from punishment for past offenses. *Lawson v. Halifax-Tonopah M. Co.*, 36 Nev. 591.

Inn.

The charge of a complaint that accused "did keep and manage the Big Meadow Hotel, a house of public resort, in a disorderly manner," is a sufficient charge, at least against collateral attack of the judgment by habeas corpus, of the offense denounced by Comp. Laws, 4920, of keeping an "inn" in a disorderly manner, as it must be assumed that a "hotel" is an "inn." *Ex Parte Breckenridge*, 34 Nev. 275.

Instruction.

In a prosecution for homicide, where the state offered a purported dying declaration, oral statements by the court as to the nature of dying declarations and as to the weight of the one offered, made in the presence of the jury upon admitting the declaration in evidence, must be considered as an uncalled-for instruction. *State v. Scott*, 37 Nev. 412.

Intermeddler.

Where a guardian executed a mortgage upon land owned by herself and her minor ward to obtain money to prevent foreclosure under another mortgage running to a third party, the mortgagee was subrogated to the rights of the original mortgagee, where his mortgage was invalid, and the fact that he had no previous interest in the property did not make him a volunteer or intermeddler, a volunteer and intermeddler being a person who thrusts himself into a situation on his own initiative, and not one who becomes a party to a transaction upon the urgent petition of a person who is vitally interested therein, and whose rights would otherwise be sacrificed. *Laf-franchini v. Clark*, 39 Nev. 48.

Irresistible Passion.

While malice and passion may coexist, and a homicide be the result of both, express malice and irresistible passion, as defined in the statute, cannot coexist; premeditation and deliberation being in express malice, and wanting in irresistible passion. *State v. Salgado*, 38 Nev. 413.

Itinerant Merchant.

Rev. Laws, 3890-3894, inclusive (Act approved March 24, 1905, sec. 1; Stats. 1905, c. 153), makes it unlawful for any itinerant merchant or peddler to offer goods for sale without first obtaining a license. Section 2 defines an itinerant merchant, etc., as one having no permanent place of business within the state, which is not regularly located and taxed. Section 3 fixes the amount of the license required. Section 4 provides that the act shall not apply to drummers representing wholesale houses; and section 5 provides that it shall not apply to the sale of farm products. Held, that the act violated art. 1, sec. 8, of the constitution of the United States, relating to interstate commerce. *Ex Parte Taylor and Rounds*, 35 Nev. 504.

Jigger Boss.

See "Pusher."

Judgment Roll.

Though section 340 of the civil practice act (Comp. Laws, 3435) provides, among other things, that if any written opinion be placed on file, in entering judgment or making an order below, a copy shall be furnished, certified in like manner, etc., a written opinion and findings of the lower court do not constitute any part of the "judgment roll," but are only intended to aid the appellate court in the determination of an appeal. *Werner v. Babcock*, 34 Nev. 42.

Where demurrer to complaint for libel was sustained, all the matters pertaining to the proceedings in the trial court so far as affecting the plaintiff's rights are embraced in the "judgment roll" within Rev. Laws, 5273, subd. 2, stating what constitutes the judgment roll, so that under Stats. 1915, c. 142, sec. 11, permitting an appeal on the

judgment roll alone, it was unnecessary to file assignments of error as required by section 13 of such act. *Talbot v. Mack*, 41 Nev. 245.

Laches.

Strictly speaking, laches implies more than mere lapse of time in asserting a right, requiring some actual or presumable change of circumstances rendering it inequitable to grant relief. *Miller v. Walser*, 42 Nev. 497.

Law of the Road.

The "law of the road" in the United States is that vehicles, when passing, should turn to the right. *Weck v. Reno Traction Co.*, 38 Nev. 285.

Legacy.

See "Devisee."

Legal Residence.

The action was for divorce; defendant denying the jurisdictional allegation of the complaint of the plaintiff's residence for the statutory period of six months prior to the suit brought. Upon trial to a jury, special findings were made, that plaintiff had established her residence solely for the purpose of obtaining a divorce. Rev. Laws, 5838, provides that divorce from the bonds of matrimony may be obtained, etc., in the county in which the plaintiff shall have resided six months before suit brought; while section 3610 provides that the "legal residence" of a person with reference to his right of suffrage and eligibility to office, is that place where his habitation is fixed and permanent, and to which, whenever he is absent, he has the intention of returning. Stats. 1911, c. 158, provides that the "legal residence" of a person "with reference to his or her right to maintain or defend any suit at law or in equity" is that place where he or she shall have been actually, physically, and corporeally present within the state or county during all of the period for which residence is claimed by him or her. Held, that there is no necessary repugnancy between the provisions of the Revised Laws relating to residence and the act of 1911; the latter merely adding the requirement of physical presence to the former general requirements of the intention permanently to reside, so that the plaintiff, taking up her residence solely for the purpose of maintaining a divorce action, did not acquire such residence as was necessary to give the court jurisdiction of her suit. *Presson v. Presson*, 38 Nev. 203.

Legatee.

See "Devisee."

Libelous Per Quod.

See "Libelous Per Se."

Libelous Per Se.

Words or expressions are "actionable per se" when their injurious character is a fact of common notoriety, and generally so understood where the utterance is published, and words or expressions "libelous

per quod" are such as require that their injurious character or effect be established by allegation and proof. *Talbot v. Mack*, 41 Nev. 245.

Any false and malicious writing published of another is "libelous per se" when its tendency is to render the party contemptible or ridiculous in public estimation or expose him to public hatred or contempt. *Id.*

While words which directly tend to the prejudice of any one in his office, profession, trade, or business are actionable per se, all words disparaging persons in such matters are not, without proof of damage, actionable in themselves. *Id.*

Liquors.

The term "intoxicating liquors," as used in prohibition law, sec. 14, making place where such liquors are manufactured, stored, sold, etc., public nuisances, is, when said section is considered together with sections 6 and 7, to be taken as used interchangeably with the word "liquors" in section 1. And district court had jurisdiction to enjoin defendant brewing company from manufacturing and selling "Sierra Beverage," although said beverage is not intoxicating. *State v. Reno Brewing Co.*, 42 Nev. 397.

Maintain.

The word "maintain" in a statute in reference to actions comprehends the institution as well as the support of the action, though it may be used to express a meaning corresponding to its more restricted definition. *National M. Co. v. District Court*, 34 Nev. 67.

Malt Liquor.

"Sierra Beverage," containing malt and one-tenth per cent alcohol, is, whether intoxicating or not, a liquor, within prohibition law, sec. 1, providing that "all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of this act." *State v. Reno Brewing Co.*, 42 Nev. 397.

May.

Rev. Laws, 5508, providing that in forcible entry cases, judgment "may" be entered for treble the actual damages, permits, but does not require such penalty to be imposed. *Glock v. Elges*, 39 Nev. 415.

Military Service.

Stats. 1917, c. 197, providing for taking of votes of electors in the military service of the United States, is a compliance with Const. art. 2, sec. 3, and is not void for discrimination against electors in the naval service, or conscripted men in the military service, since "military service" includes every branch of service in either the army or the navy of the United States. *Maclean v. Brodigan*, 41 Nev. 468.

Misconduct.

For an attorney to publish and advertise a pamphlet the purpose of which is to

attract nonresidents to the state to apply to its courts for divorce, through his agency as an attorney, that he may profit financially thereby, is "misconduct," within Comp. Laws, 2625, providing for removal or suspension of attorneys for misconduct. In *Re Schnitzer*, 33 Nev. 581.

Monument.

A will gave the residue of the testator's estate to defendant fraternal order if, within five years from the date of his death, the fraternal order should establish a home for orphans and foundlings to be named after the testator's son, and providing, as an alternative, if the order should not accept, a similar gift of the income of the residue to a school district on condition it build an industrial school named after testator's son, or, in default of the district's acceptance, a similar gift to the state university to establish an industrial school fund named after testator's son. Held that, the intention of the testator being to provide a "monument" or artificial structure for the purpose of preserving the memory of his son, the fraternal order was not entitled to the annual income of the estate in any event, but only so long as it maintained the home. In *Re Hartung*, 40 Nev. 262.

Moot Case.

Where, pending appeal from judgment sustaining demurrer to the complaint in an action to enjoin a nuisance, defendant built its plant and operated it for three years, without any perceptible harm to plaintiff's lands, the appeal would be dismissed as embodying a "moot case," one seeking to determine an abstract question which does not rest upon existing facts or rights, since the cause of action of plaintiff's complaint, if any was alleged, was based upon a threatened injury to its lands from proposed action which did not in fact follow such action. *Pacific L. Co. v. Mason Valley Mines Co.*, 39 Nev. 105.

Murder in the First Degree.

Section 17 of the crimes and punishments act (Comp. Laws, 4672), making all murder by poison, lying in wait, or torture, or any other kind of wilful, deliberate, and premeditated killing, or committed in the perpetration or attempt to perpetrate any arson, rape, robbery, or burglary, murder in the first degree, does not create separate statutory homicides, but the killing of a human being in either one of the methods described is "murder in the first degree," and a felony and a homicide committed in perpetrating or attempting to perpetrate a felony constitute together the one crime of murder in the first degree. *State v. Mangana*, 33 Nev. 511.

Near.

A devise conditioned on the establishment of an orphans' home "near" a city was satisfied by its establishment within the city corporate limits; the apparent intention by such direction being to confine the location

of the home to the vicinity of the city, and not to exclude it from the city limits. In *Re Hartung*, 40 Nev. 262.

Negative Testimony.

The testimony of one claiming a mechanic's lien for work performed upon a building that he worked on the building, that at the time he looked for a notice signed by the owner that he would not be responsible for the repairs and that there was no such notice at any time while he was doing the work is not negative testimony such as may be disregarded in the face of positive testimony that the notice was posted. *Gaston v. Avansino*, 39 Nev. 128.

Neat Cattle.

See "Bovine."

New Matter.

Under practice act, sec. 104, "new matter" constituting a defense means some facts which plaintiff is not bound to prove, and which go in avoidance or discharge. *Dixon v. Pruett*, 42 Nev. 345.

Office.

The position of townsite trustee is not an office within the provision of the constitution prohibiting a judge from accepting any office other than a judicial office during the term for which he is elected. *Jennett v. Stevens*, 34 Nev. 128.

Under Stats. 1913, c. 128, sec. 1, creating the office of exposition commissioner of the state for the Panama-Pacific and the Panama-California expositions, and authorizing the governor to appoint an exposition commissioner, and section 2, creating the board of directors for the state for such expositions, whose duty it shall be to employ superintendents, clerks, and other persons upon such terms as may be deemed just and equitable to carry out the provisions of that act, and to cooperate and advise with the exposition commissioner, the position occupied by a superintendent so employed was not an "office" within Const. art. 4, sec. 8, providing that no senator or member of assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under the state, which shall have been created or the emoluments of which shall have been increased during his term, except such office as may be filled by election by the people, as the term "office" embraces the ideas of continued duration, fees, or emoluments and duties, and such superintendent was intrusted with none of the sovereign power of the state, his compensation, period of employment, and the details of his duties being all matters of contract with the board of directors, especially as he was not required to take an oath as required by Const. art. 15, sec. 2, in the case of officers, indicating that the state officers did not consider him an officer. *State v. Cole*, 38 Nev. 215.

Order Made and Entered.

An order refusing or granting a motion

for a new trial is made and entered, within Rev. Laws, 5329, requiring an appeal from such order to be taken within sixty days after the order has been "made and entered in the case," at the time the order is entered in the minutes of the court, and not at the date of filing of a decision upon the merits of the motion. *Nelson v. Smith*, 42 Nev. 302.

Ordinary Care.

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of the home to the vicinity of the city, and not to exclude it from the city limits. In *Re Hartung*, 40 Nev. 262.

Negative Testimony.

The testimony of one claiming a mechanic's lien for work performed upon a building that he worked on the building, that at the time he looked for a notice signed by the owner that he would not be responsible for the repairs and that there was no such notice at any time while he was doing the work is not negative testimony such as may be disregarded in the face of positive testimony that the notice was posted. *Gaston v. Avansino*, 39 Nev. 128.

Neat Cattle.

See "Bovine."

New Matter.

Under practice act, sec. 104, "new matter" constituting a defense means some facts which plaintiff is not bound to prove, and which go in avoidance or discharge. *Dixon v. Pruett*, 42 Nev. 345.

Office.

The position of townsite trustee is not an office within the provision of the constitution prohibiting a judge from accepting any office other than a judicial office during the term for which he is elected. *Jennett v. Stevens*, 34 Nev. 128.

Under Stats. 1913, c. 128, sec. 1, creating the office of exposition commissioner of the state for the Panama-Pacific and the Panama-California expositions, and authorizing the governor to appoint an exposition commissioner, and section 2, creating the board of directors for the state for such expositions, whose duty it shall be to employ superintendents, clerks, and other persons upon such terms as may be deemed just and equitable to carry out the provisions of that act, and to cooperate and advise with the exposition commissioner, the position occupied by a superintendent so employed was not an "office" within Const. art. 4, sec. 8, providing that no senator or member of assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under the state, which shall have been created or the emoluments of which shall have been increased during his term, except such office as may be filled by election by the people, as the term "office" embraces the ideas of continued duration, fees, or emoluments and duties, and such superintendent was intrusted with none of the sovereign power of the state, his compensation, period of employment, and the details of his duties being all matters of contract with the board of directors, especially as he was not required to take an oath as required by Const. art. 15, sec. 2, in the case of officers, indicating that the state officers did not consider him an officer. *State v. Cole*, 38 Nev. 215.

Order Made and Entered.

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received unless sent by the county commissioners of the county in which the child resides, who shall agree to pay for its maintenance, and juvenile court law March 24, 1909 (Stats. 1909, c. 180, sec. 7), as amended by Stats. 1911, c. 197 (Rev. Laws, 734), providing for the commission of dependent and neglected children to any suitable state institution organized for the care of dependent or neglected children, and section 1, under which "dependent and neglected children" include those having immoral, evil, or incorrigible tendencies, the court could not commit to the state orphans' home a dependent or neglected child who was not an orphan, since an "orphans' home" is an institution or home for the care of destitute orphans, and not a "reformatory" or institution in which young offenders are confined and instructed with a view to their reformation. *McKinnon v. Harwood*, 35 Nev. 494.

Repugnancy.

Two statutes relating to the same subject-matter are to be read and construed together, with a view to harmonizing them, if possible, to give effect to both, unless the later act expressly repeals the earlier, or is so repugnant to it as to repeal it by necessary implication; "repugnancy" being inconsistency or conflict with something else. *Presson v. Presson*, 38 Nev. 203.

Resided.

Actual living in the county by plaintiff for the six months is necessary to give the court jurisdiction under Rev. Laws, 5838, providing that divorce may be obtained by complaint to the district court of the county in which plaintiff shall have "resided" six months before suit brought.

"Resided" means permanency as well as continuity. Actual residence is the place of actual abode; of physical presence—the abiding-place.

Legal residence may be merely ideal, but actual residence must be substantial.

Where residence is made the basis of jurisdiction, parties who seek to invoke the power of the court to relieve them from the marriage tie must bring themselves clearly and affirmatively within the jurisdiction of the court. *Fleming v. Fleming*, 36 Nev. 135.

Residence.

"Residence" is a settled or fixed abode of a character indicating permanency, or at least an intention to remain for an indefinite time, being made up of the physical fact of abode and the intention of remaining. *Presson v. Presson*, 38 Nev. 203.

Residuary Bequest.

See "Residue."

Residuary Legatee.

See "Residue."

Residue.

Under such will, the order was not a "residuary legatee," as the term "residuary bequest" means that the residue of an

estate is bequeathed to a person absolutely, and as there can be but one "residue" of an estate, meaning what is left after the payment of the debts and general legacies and the satisfaction of other specific gifts. In *Re Hartung's Estate*, 39 Nev. 200.

Risks Incident to the Employment.

In an employee's action for injuries, an instruction that by "risks incident to the employment" was meant such risks as existed after the master had performed his full duty to his servant in furnishing instrumentalities, machinery, and appliances reasonably safe for the purpose for which they were intended, that this included keeping them in reasonably safe repair, that by the assumption of risk incident to the employment was not meant any additional or extra hazard, occasioned by the master's negligence in failing to keep his tools, machinery, and appliances in reasonably safe repair, was not erroneous or misleading. *Konig v. N. C. O.*, 36 Nev. 181.

Revision.

See "Amendment."

Revive.

See "Amendment."

Shall.

As used in act approved February 20, 1909 (Rev. Laws, 4453), section 9, providing that the state board of embalmers shall recognize licenses issued in another state, and on presentation thereof shall issue the regular license to the holders, the word "shall" is not equivalent to "may," but is mandatory. *Eddy v. Board of Embalmers*, 40 Nev. 329.

Slander.

While the original term "slander" was applied more to words or utterances, the nature of which was defamatory of individuals, the term is applicable to utterances with reference to property, whether real or personal; but, in order to maintain an action for slander of title to property, it is necessary to show that the words spoken were false, that they were maliciously spoken, and that plaintiff suffered a pecuniary injury. *Potosi Zinc Co. v. Mahoney*, 36 Nev. 390.

Slit.

Under Rev. Laws, 6416, defining mayhem to include slitting the ear of a human being, and in view of section 6417, stating that it is immaterial how the injury is inflicted, an information charging that accused bit off a portion of the ear of one C. is sufficient, though "slit" may be broader than "bite." *State v. Enkhous*, 40 Nev. 1.

Special Law.

The provision in the act of February 20, 1913 (Stats. 1913, c. 10), amending section 22 of the marriage and divorce act of 1861 (Stats. 1861, c. 33), as amended in 1875

(Stats. 1875, c. 22), by declaring that when, at the time of the accrual of a cause for divorce, the parties shall not both be bona-fide residents of the state, no court shall grant divorce, unless either party shall have been a bona-fide resident for not less than one year next preceding the commencement of the action, is a general uniform operation throughout the state, and applies the same in every part of the state, and to all persons under similar circumstances, and is not a local or special law within Const. art. 4, sec. 20, prohibiting any local or special law granting a divorce. *Worthington v. District Court*, 37 Nev. 212.

State Treasury.

The constitution, art. 5, sec. 21, constitutes the governor, secretary of state, and attorney-general a board of examiners to examine claims against the state, except the compensation of officers fixed by law. Article 4, section 19, provides that no money shall be drawn from the state treasury except to meet appropriations made by law. Article 5, section 22, provides that the state treasurer and state controller shall perform duties prescribed by law. Rev. Laws, 4459, requires all claims against the state, provided for by appropriation, but not liquidated, to be presented to the board of examiners for approval, and that the controller shall not allow them unless so approved. Section 4157 defines the general duties of the state controller, section 4158 requires him to audit all claims against the state for which appropriation has been made, of which the amount has not been definitely fixed by law, and which have been examined and approved by the board, and to allow claims as provided by law, and section 4159 requires him to draw all warrants upon the treasury and to account therefor. The act relating to the compensation of workmen (Stats. 1913, c. 111) receiving injuries in the course of their employment resulting in death, creates an industrial commission, composed of the governor, state mining inspector, attorney-general and two others named by them, and a state insurance fund derived from premiums paid by such employers as accept the terms of the act, and by section 24 provides that all premiums shall be paid to the state treasurer, and by section 40 that the state shall not be liable for any compensation under the act except from such funds. Held, that the "state treasury" did not include the state insurance fund, which was a special fund given to the treasurer in trust, as distinguished from the general taxes and revenues of the state, and that the requirement for presentation of claims to the board of examiners and the issuance of warrants by the controller did not apply. *State v. McMillan*, 38 Nev. 383.

Stock of Merchandise.

A sale of a saloon and dance-hall, without complying with bulk sales act (Rev. Laws, 3908-3912), regulating the sale of merchan-

dise in bulk otherwise than in the usual course of trade is *prima facie* void as against creditors of the seller, and the stock of liquors sold and the money derived therefrom are subject to execution against the seller, while the glassware, bar fixtures, and furnishings of the dance-hall and saloon are not within the description of "portion of a stock of merchandise" within the statute, and these articles are not subject to execution against the seller. *Marshon v. Toohey*, 38 Nev. 248.

Strictly Necessary.

Giving negotiable notes for temporary loans made by county commissioners in case of great necessity or emergency, to be paid for from the next tax levy, under authority of the act of March 13, 1903 (Stats. 1903, c. 78), secs. 6, 7 (Rev. Laws, 3831, 3832), is not within the act of March 8, 1865 (Stats. 1864-65), sec. 8, subd. 13, empowering county commissioners to do things "strictly necessary" to the full discharge of their powers. *First National Bank v. Nye County*, 38 Nev. 123.

Sum Involved.

Const. art. 6, sec. 8, enacted while Stats. 1861, c. 15, was in force in the territory, providing for the foreclosing of all liens in one action, requires the legislature to fix the powers of justices of the peace, and authorizes it to confer jurisdiction upon them, concurrent with district courts, of actions to enforce mechanics' liens wherein the amount does not exceed \$300. Rev. Laws, 5714, is to the same effect, and section 2224 allows any number of lien claimants to join in the same action and the court to consolidate separate actions; and section 2227 provides that such liens may be enforced by an action in any court of competent jurisdiction, and, as amended by Stats. 1907, c. 90, applies to mechanic's lien proceedings in justice's court where the sum involved does not exceed \$300. Held, that the words "sum involved" mean the sum involved in the several liens embraced in a suit, and that a justice's court had no jurisdiction of an action to foreclose mechanic's liens, where the total amount of the liens exceeds \$300, notwithstanding each of the liens is for a less amount. *Phillips v. Snowden Placer Co.*, 40 Nev. 66.

To Be Selected.

Const. art. 4, sec. 30, declares that a homestead as provided by law shall be exempt from forced sale, and shall not be alienated without the joint consent of the husband and wife, and that laws shall be enacted providing for the recording of such homestead. Stats. 1864-65, c. 72, provides that a selected homestead shall be exempt from forced sale, and that the selection shall be made by recording intention in writing. Amendatory act, Stats. 1897, c. 20, provides that no deed or mortgage of a homestead, whether a declaration has been filed or not, shall be valid, unless both the

husband and wife executed and acknowledged the same. Held, that although a homestead was not registered as required by law, the husband's sole conveyance or incumbrance of it did not affect the wife's right in the homestead, which could not be alienated unless the instrument was executed and given by both. *First National Bank v. Meyers*, 40 Nev. 284.

Together With.

Under Comp. Laws, 345, providing that, after the issuance of a patent on townsite land, the corporate authorities or judge to whom the patent shall issue shall execute, to the persons entitled thereto, a deed in fee simple for such lots on payment of their due proportion of the purchase money, together with their proportion of such sum as may be necessary to pay for the streets, alleys, squares, and public grounds, not to exceed 50 cents for each lot, etc., the words "together with" show that the limitation of 50 cents was the maximum that could be apportioned to buy all the land within the town site, inclusive of that within the streets, alleys, squares, and public grounds, and does not apply merely to the amount for the streets, alleys, squares, and public grounds. *Jennett v. Stevens*, 34 Nev. 128.

Trustee of Express Trust.

The indorsement and delivery of a note, whether negotiable or nonnegotiable, as collateral for the payment of a debt, enables the pledgee upon default of pledgor, to maintain an action thereon in its own name, the pledgee, if not the real party in interest within practice act, sec. 44 (Rev. Laws, 4986), being at least a trustee of an express trust, within section 45. *W. B. and T. Co. v. Corbell*, 42 Nev. 378.

Unincorporated Towns.

The proviso to Stats. 1881, c. 48, added by Stats. 1889, c. 43, reading that in all unincorporated cities and towns the board of county commissioners shall have power to fix and collect a tax upon certain businesses and amusements, and none other, does not apply to towns which established their form of government after the unincorporated town act (Stats. 1879, c. 98) had been repealed by Stats. 1887, c. 43, or to towns which, by reason of their having a voting population of 600 or more, ipso facto come under the general town government act, the term "unincorporated towns" not referring to all towns within the state not incorporated; as to give it such an interpretation would nullify the grant by the legislature in the body of the act of power to boards of county commissioners to levy and collect a license tax upon numerous specific businesses, but referring specifically to towns which have assumed a form of town government under the act of 1879 entitled "An act to provide for the government of unincorporated towns in this state." *Nye County v. Schmidt*, 39 Nev. 456.

United in Business.

The relation of landlord and tenant between a juror and a party authorizes the sustaining of a challenge to a juror under Comp. Laws, 3259, subsec. 3, making it ground for challenge for cause to a juror that he is "united in business" with either party. *Sherman v. Southern Pacific Co.*, 33 Nev. 385.

Voluntary Confession.

Where the defendant with two others was indicted for arson, and the complaining witness and the sheriff advised him to protect himself, that it would be better for him if he told the truth, the theory of the prosecution being that his codefendants were the principals who had instigated him to burn the prosecuting witness's store, and the prosecuting witness told him that he only wanted the principals, and others told him that his statements to a detective while in jail were sufficient to send him to prison, a confession elicited under such circumstances is not voluntary; for to be voluntary a confession must be made without hope or inducement of reward. *State v. Dye*, 36 Nev. 143.

Worthy of Its Name.

A devise conditioned upon establishing by a fraternal order of an orphans' home "worthy of its name" was satisfied by the establishment of a home, which, considering the strength of the order in the state, the population of the state, and the general conditions existing therein, compared favorably with similar institutions of the order elsewhere. *In Re Hartung*, 40 Nev. 262.

Under a will devising the residue of an estate to a fraternal order, the income therefrom to be paid over to it annually, if within five years from testator's death the order established a home for orphans "worthy of its name," the words "worthy of its name" did not require the expenditure therefor of the sum of \$25,000 as specified for a school building in another paragraph of the will, but the will made the order itself judge as to whether or not the home was worthy of its name, subject to the right of the courts to finally determine the question. *In Re Hartung*, 40 Nev. 262.

WORDS USED IN STATUTES

See Constitutional Law, 4.

WORK AND LABOR

1. Amount of recovery.

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Under a complaint on quantum meruit for services, where a specified contract is proved fixing the price therefor, the stipulated price becomes the quantum meruit in the case. *Warren v. Glasgow Exploration Co.*, 40 Nev. 103; 100 P. 793.

WORKMEN'S COMPENSATION

See Mandamus, 1, 15.

"WORTHY OF ITS NAME"

See Charities, 3.

WRIT OF CERTIORARI

See Justices of the Peace, 11.

WRIT OF ERROR

See Mandamus, 2.

**WRIT OF ERROR TO U. S.
SUPREME COURT**

See Courts, 9.

WRIT OF MANDAMUS

See Mandamus, 1, 2, 7.

WRIT OF PROHIBITION

See Constitutional Law, 14, 17; Courts, 10;
Prohibition, 1, 3, 7, 8.

WRIT OF QUO WARRANTO

See Removal of Causes, 4.

WRITTEN CONTRACT

See Reformation of Instruments, 2.

WRONGFUL EXECUTION

See Execution, 1.

WRONGFUL GARNISHMENT

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**WRONGFUL POSSESSOR OF
PROPERTY**

See Trover and Conversion, 1.

TABLE OF NEVADA AND FEDERAL CASES DIGESTED WITH DIGEST PAGING

For convenience, the abbreviation Nev. has been omitted in this table and a colon (:) substituted therefor. Thus, the first case below, Abel v. Breen, 41:516, 173 P. 555, means Abel v. Breen, 41 Nevada, 516, and that the same case is also reported in 173 Pacific Reporter, 555.

The figures in **black-faced type** refer to the page in the Digest where the case is digested. Reversed titles have no digest paging in this table.

The exact title appearing in the Reports has been given in every instance. For suits by or against counties, it would be well to look under "Commissioners of," "County of," as well as under the name of the particular county.

The book and page of Nevada cases which have been rereported in the Am. Dec., Am. Rep., Am. St. Rep., L. R. A., L. R. A. (N. S.), Ann. Cas. and Am. Law Rep. will be found after title of case.

Titles of certain cases, fully digested in the Nevada Digest, issued in 1912, are inserted herein without digest paging to show where rereported in annotated sets which rereport appeared after said Digest was issued.

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- 6 Nev. 30-40. **HUMBOLDT COUNTY v. CHURCHILL COUNTY.**
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- 10 Nev. 43-47. **BARRENERBERGER v. HAUPT.**
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- 10 Nev. 47-91. **STATE v. CENTRAL PACIFIC R. R. CO.**
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- 10 Nev. 92-97. **HARLAN v. EUREKA MINING CO.**
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- 10 Nev. 97-106. **STATE Ex Rel. MURPHY & LUTZ v. RISING.**
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- 10 Nev. 106-125. **STATE v. SMITH.**
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- 10 Nev. 125-137. **MORRILL v. TEHAMA CON. M. & M. CO.**
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- 10 Nev. 155-163. **STATE Ex Rel. KEITH v. DAYTON & VIRGINIA TOLL-ROAD CO.**
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- 10 Nev. 163-167. **STATE v. MYATT.**
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- 10 Nev. 167-176. **STATE Ex Rel. SEARS v. WRIGHT.**
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- 10 Nev. 176-200, 21 Am. Rep. 721. **STATE Ex Rel. GEORGE v. SWIFT.**
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- 10 Nev. 215-217. **Ex Parte EDGINGTON.**
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- 10 Nev. 217-250. **BARNES v. SABBON.**
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- 10 Nev. 250-261, 21 Am. Rep. 738. **STATE Ex Rel. CHASE v. ROGERS.**
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- 10 Nev. 284-290. **STATE v. RIGG.**
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- 10 Nev. 319-323. **STATE Ex Rel. FLACK v. ROGERS.**
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- 10 Nev. 323-327. **Ex Parte SPINNEY.**
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- 10 Nev. 355-369. **SCHROEDER v. GEMEINDER.**
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- 10 Nev. 370-385. **SCORPION SILVER M. CO. v. MARSANO.**
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- 10 Nev. 388-400, 21 Am. Rep. 745. **STATE v. ROVER.**
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- 10 Nev. 416-438. **GRAY v. SULLIVAN.**
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- 10 Nev. 445-453. **KEHOE v. BLETHEN.**
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- 11 Nev. 17-29. **STATE v. HUFF.**
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- 11 Nev. 30-38. **STATE v. WATKINS.**
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- 11 Nev. 39-69. **STATE v. McCLEAR.**
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- 11 Nev. 69-75. **EVANS v. COOK.**
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- 11 Nev. 76-80. **CLARK v. STROUSE.**
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- 11 Nev. 80-85. **PHELPS v. DUFFY.**
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- 11 Nev. 90-95. **Ex Parte LARKIN.**
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- 11 Nev. 98-109. **STATE v. RAYMOND.**
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- 11 Nev. 109-119. **ODD FELLOWS SAVINGS AND COMMERCIAL BANK v. QUILLEN.**
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- 11 Nev. 128-148. **STATE Ex Rel. ROSENSTOCK v. SWIFT.**
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- 11 Nev. 149-161. **GAUDETTE v. TRAVIS.**
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- 11 Nev. 161-171. **WELLS FARGO & CO. v. DAYTON.**
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- 11 Nev. 187-194. **PHILLIPS v. WELCH.**
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- 11 Nev. 213-222. **MAXWELL v. RIVES.**
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- 11 Nev. 223-237. **STATE v. GRACEY.**
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- 11 Nev. 237-249. **HUMBOLDT M. & M. CO. v. TERRY.**
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- 11 Nev. 255-259, 21 Am. Rep. 754. **STATE v. PICKETT.**
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- 11 Nev. 260-268. **Estate of WALLLEY.**
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- 11 Nev. 287-295. **Ex Parte RICORD.**
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- 11 Nev. 304-314. **CAPRON v. STROUT.**
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- 11 Nev. 314-334. **STATE v. LARKIN.**
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- 11 Nev. 350-376, 21 Am. Rep. 757. **QUIGLEY v. CENTRAL PACIFIC R. R. CO.**
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- 11 Nev. 394-412. **DAYTON GOLD AND SILVER M. CO. v. SEAWELL.**
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- 11 Nev. 428-441. **Ex Parte MAXWELL.**
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- 12 Nev. 38-63. **ALLISON v. HAGAN.**
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- 12 Nev. 65-78. **LECHLER v. CHAPIN.**
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- 12 Nev. 78-82. **ELDER v. SHAW.**
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- 12 Nev. 87-88. **Ex Parte ALLEN.**
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- 12 Nev. 94-98. **DUFFY v. MORAN.**
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- 12 Nev. 105-108. **STATE v. GUERRERO.**
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- 12 Nev. 118. **STATE v. CHIN WAH.**
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- 12 Nev. 118-121. **DANIELS v. DANIELS.**
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- 12 Nev. 158-195. **PHILLIPS v. WELCH.**
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- 12 Nev. 280-286. **LEE v. MCLEOD.**
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- 12 Nev. 286-300. **HOGLE v. LOWE.**
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- 12 Nev. 369-392. **STATE v. AH MOOK.**
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- 12 Nev. 401-403, 28 Am. Rep. 802. **STATE v. RYAN.**
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13 Nev. 17-25. STATE v. ROVER.

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13 Nev. 25-44. BISHOP v. STEWART.

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13 Nev. 44-64. WARD v. CARSON RIVER WOOD CO.

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13 Nev. 65-77. SMITH v. STEWART.

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13 Nev. 84-85. ALDERSON v. GILMORE.

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13 Nev. 85-92. MARTIN v. DISTRICT COURT.

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13 Nev. 106-156. SOLEN v. VIRGINIA & TRUCKEE R. R. CO.

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13 Nev. 157-184, 29 Am. Rep. 293. WATERS v. STEVENSON.

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13 Nev. 234-242. WILLIAMS v. RICE.

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13 Nev. 276-278. SOLOMON v. FULLER.

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13 Nev. 279-284. CRANE, HASTINGS & CO. v. GLOSTER.

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- 13 Nev. 303-330. SMITH v. SHRIEVES.**
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- 13 Nev. 386-394. STATE v. HAMILTON & LAURIE.**
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- 13 Nev. 395-398. HANSON v. CHIATOVICH.**
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- 14 Nev. 17-24, 33 Am. Rep. 523. BLAISDEL v. STEPHENS.**
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- 14 Nev. 153-161. GOSSAGE v. CROWN POINT G. & S. M. CO.**
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- 14 Nev. 161-166. DICK v. BIRD.**
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- 14 Nev. 202-209, 33 Am. Rep. 559. **STATE Ex Rel. KEYSER v. HALLOCK.**
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- 14 Nev. 265-288. **DAVIS v. COOK.**
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- 14 Nev. 293-311. **TRUCKEE LODGE v. WOOD.**
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- 14 Nev. 311-320. **Ex Parte DEIDESHEIMER.**
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- 14 Nev. 336-341. **MAYBERRY v. BOWKER.**
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- 14 Nev. 347-350. **STATE v. MCCORMICK.**
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- 14 Nev. 351-362. **BUNTING v. CENTRAL PACIFIC R. R. CO.**
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- 14 Nev. 397-398. **FINLAYSON v. MONTGOMERY.**
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- 14 Nev. 398-405. **MCLEOD v. LEE.**
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- 14 Nev. 431-435. **FLORAL SPRINGS WATER CO. v. RIVES.**
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- 15 Nev. 64-74, 37 Am. Rep. 458. **STATE v. FOLEY.**
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- 15 Nev. 74-100. **STATE v. PRITCHARD.**
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- 15 Nev. 114-141. **DREXLER v. TYBRELL.**
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- 15 Nev. 147-157. **OVERMAN SILVER M. CO. v. CORCORAN.**
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- 15 Nev. 167-184. **RICORD v. CENTRAL PACIFIC R. R. CO.**
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- 15 Nev. 188-195. **STATE v. PEARCE.**
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- 15 Nev. 195-214. **THOMPSON v. POWNING.**
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- 15 Nev. 234-259. **STATE v. CALIFORNIA MINING CO.**
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- 15 Nev. 271-275. **MAU v. LIDDLE.**
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- 15 Nev. 293-302. **BASSETT v. MONTE CRISTO G. & S. M. CO.**
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- 15 Nev. 341-345. **REESE G. & S. M. CO. v. RYE PATCH CON. M. & M. CO.**
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- 15 Nev. 345-378. **STATE v. McLANE AND McINTIRE.**
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- 15 Nev. 379-383. **EWING v. JENNINGS.**
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- 15 Nev. 385-389. **STATE v. NORTHERN BELLE M. & M. CO.**
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- 15 Nev. 389-394. **LIGHTLE v. BERNING.**
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- 15 Nev. 407-416. **STATE v. LOPEZ.**
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- 15 Nev. 426-428. **TULL v. ANDERSON.**
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- 15 Nev. 452-461. **ALLEN v. REILLY.**
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- 15 Nev. 461-464. **CHILD v. SINGLETON.**
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16 Nev. 39-42. NESBITT v. CHISHOLM.

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16 Nev. 49-50. BORDEN v. BENDER.

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16 Nev. 50-61, 40 Am. Rep. 488. STATE v. AH CHEW.

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16 Nev. 131-136. WALL v. TRAINOR.

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16 Nev. 136-152. STATE Ex Rel. MURPHY v. OVERTON.

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16 Nev. 156-180. MARSHALL v. GOLDEN FLEECE G. & S. M. CO.

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16 Nev. 207-215. STATE v. ST. CLAIR.

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16 Nev. 215-217. LAKE v. KING.

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16 Nev. 228-242. BROWN v. WARREN.

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16 Nev. 307-311. STATE v. HING.

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- 17 Nev. 25-84, 27 Pac. 1105. **ROSE v. RICHMOND MINING CO.**
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- 17 Nev. 96-103, 28 Pac. 122. **STATE v. STOREY COUNTY COMMISSIONERS.**
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- 17 Nev. 103-123, 28 Pac. 124. **MCLEOD v. LEE.**
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- 17 Nev. 124-131, 28 Pac. 238. **CLARK v. CLARK.**
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- 17 Nev. 184-188, 30 Pac. 699. **Ex Parte JOB.**
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- 17 Nev. 188-195, 30 Pac. 435. **NICKALS v. WINN.**
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- 17 Nev. 197-203, 30 Pac. 700. **LAMANACE v. BYRNES.**
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- 17 Nev. 245-259, 30 Pac. 882. **O'CONNOR v. NORTH TRUCKEE DITCH CO.**
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- 17 Nev. 259-275, 30 Pac. 887. **STATE v. CENTRAL PACIFIC R. R. CO.**
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- 17 Nev. 289-309, 30 Pac. 896. **ESSER v. SPAULDING.**
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- 17 Nev. 309-322, 30 Pac. 997. **STINSON v. SWEENEY.**
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- 17 Nev. 401-409, 30 Pac. 1076. **WILSON v. HILL.**
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- 17 Nev. 424-428, 30 Pac. 1080. **STATE v. LOVELESS.**
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- 17 Nev. 429-435, 30 Pac. 1082. **SADLER v. TATTI.**
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- 18 Nev. 21-28, 1 Pac. 831. **VICTOR M. & M. Co. v. JUSTICE COURT.**
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- 18 Nev. 34-48, 1 Pac. 186. **STATE Ex Rel. CARDWELL v. GLENN.**
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- 18 Nev. 49-59, 1 Pac. 194, 51 Am. Rep. 732. **KELLY v. KELLY.**
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- 18 Nev. 71-73, 1 Pac. 377. **ROBINSON v. LONGLEY.**
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- 18 Nev. 80-89, 1 Pac. 448. **STEEL v. GOLD LEAD G. & S. M. CO.**
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- 20 Nev. 290-291, 21 Pac. 322. **FENSTERMAKER v. PAGE.**
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- 20 Nev. 317-326, 22 Pac. 99. **STATE v. HOADLEY.**
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- 20 Nev. 364-372, 22 Pac. 234. **MCDONALD v. FOX.**
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- 21 Nev. 72-74, 25 Pac. 297. **LINDSAY v. JONES.**
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23 Nev. 99-102, 42 Pac. 866. STATE Ex Rel. SUTHERLAND v. NYE.

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23 Nev. 103-120, 43 Pac. 193. STATE v. VAUGHAN.

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23 Nev. 120-126, 43 Pac. 470. STATE Ex Rel. CUTTING v. LA GRAVE.

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23 Nev. 127-133, 43 Pac. 918, 62 Am. St. Rep. 768. STATE v. O'KEEFE.

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23 Nev. 134-140, 43 Pac. 916. ORR v. ULYATT.

Cited *Yori v. Phenix*, 38 Nev. 282, 149 Pac. 180; *Southern Pacific Co. v. Miller*, 39 Nev. 174, 175, 154 Pac. 929.

23 Nev. 143-154, 44 Pac. 430. STATE v. WHEELER.

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23 Nev. 154-182, 44 Pac. 423, 46 Pac. 52, 726, 62 Am. St. Rep. 772. WATT v. NEVADA CENTRAL R. R. CO.

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23 Nev. 188-193, 44 Pac. 818. DENNIS v. CAUGHLIN.

Cited *Thornhill v. Wear* (La.), 60 South. 230.

23 Nev. 194-203, 44 Pac. 819. STREETER v. JOHNSON.

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23 Nev. 207-216, 45 Pac. 139. GARDNER v. GARDNER.

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23 Nev. 243-246, 45 Pac. 467. STATE Ex Rel. THOMPSON v. DISTRICT COURT.

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23 Nev. 247-262, 45 Pac. 529. STATE Ex Rel. THOMPSON v. WASHOE COUNTY.

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23 Nev. 262-267, 45 Pac. 982. STATE v. LINCOLN COUNTY.

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23 Nev. 279-283, 46 Pac. 257. LUTZ v. KINNEY.

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23 Nev. 283-300, 46 Pac. 723, 35 L. R. A. 759. STATE v. VIRGINIA & TRUCKEE R. R. CO.

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23 Nev. 304-318, 46 Pac. 802, 62 Am. St. Rep. 800. STATE v. ZICHFELD.

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- 23 Nev. 330-343, 47 Pac. 1, 977. ROBINSON v. KIND.**
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- 23 Nev. 346-348, 47 Pac. 194. STATE v. BUSTER.**
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- 23 Nev. 349-356, 47 Pac. 194. SHIELDS v. ORR EXTENSION DITCH CO.**
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- 23 Nev. 356-358, 47 Pac. 450. STATE Ex Rel. HARDIN v. SADLER.**
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- 23 Nev. 369-372, 47 Pac. 979. REINHART v. COMPANY D.**
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- 23 Nev. 373-386, 48 Pac. 674. STATE Ex Rel. HOWELL v. LA GRAVE.**
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- 23 Nev. 390-403, 48 Pac. 628. STATE v. MURPHY.**
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- 23 Nev. 404-409, 48 Pac. 897. PEERS v. REED.**
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- 23 Nev. 409-431, 48 Pac. 1036, 49 Pac. 169. SWEENEY v. HJUL.**
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- 23 Nev. 437-459, 49 Pac. 41. STATE Ex Rel. RYAN v. CRONAN.**
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- 23 Nev. 459-467, 49 Pac. 39. FOLSOM v. MARLETTE.**
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- 23 Nev. 468-475, 49 Pac. 119. STATE Ex Rel. KEITH v. WESTERFIELD.**
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- 23 Nev. 475-486, 49 Pac. 116. ALEXANDER v. WINTERS.**
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- 24 Nev. 38-53, 40 Pac. 453, 50 Pac. 1031. LUTZ v. KINNEY.**
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- 24 Nev. 53-90, 49 Pac. 945, 50 Pac. 607. STATE v. VIRGINIA & TRUCKEE R. R. CO.**
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- 24 Nev. 91-92, 49 Pac. 1038. Ex Parte CRAWFORD.**
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- 24 Nev. 102-113, 50 Pac. 1. **LYON COUNTY v. ROSS.**
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- 24 Nev. 114-115, 50 Pac. 1. **PALMER v. OULVERWELL.**
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- 24 Nev. 125-143, 50 Pac. 438, 77 Am. St. Rep. 791. **BARNES v. WESTERN UNION TEL. CO.**
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- 24 Nev. 143-146, 50 Pac. 798. **ALEXANDER v. WINTERS.**
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- 24 Nev. 154-162, 50 Pac. 849. **MANDLEBAUM v. GREGOVICH.**
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- 24 Nev. 162-170, 50 Pac. 252, 77 Am. St. Rep. 252. **ADAMS v. BAKER.**
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- 24 Nev. 182-183, 51 Pac. 252. **CASSINELLI v. CASSINELLI.**
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- 24 Nev. 187-196, 51 Pac. 837. **STATE Ex Rel. FLETCHER v. OSBURN.**
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- 24 Nev. 197-216, 51 Pac. 834, 52 Pac. 649. **Estate of FOLEY.**
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- 24 Nev. 222-229, 52 Pac. 12. **STATE Ex Rel. HOPPIN v. CHENEY.**
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- 24 Nev. 230-238, 51 Pac. 982. **STATE v. ALTA SILVER M. CO.**
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- 24 Nev. 238-242, 51 Pac. 1027. **Ex Parte WEBB.**
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- 24 Nev. 242-250, 51 Pac. 1025. **BURGESS v. HELM.**
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- 24 Nev. 251-263, 52 Pac. 274. **STATE Ex Rel. FLETCHER v. RUHE.**
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- 24 Nev. 264-273, 53 Pac. 597. **BROOKS v. NEVADA NICKEL SYNDICATE.**
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- 24 Nev. 273-288, 52 Pac. 609, 53 Pac. 178, 77 Am. St. Rep. 807. **NESBITT v. DELAMAR G. M. CO.**
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- 24 Nev. 292-293, 53 Pac. 178. **THOMPSON v. TURNER.**
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- 24 Nev. 306-308, 53 Pac. 600. MARX v. LEWIS.**
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- 24 Nev. 329-335, 53 Pac. 854. HARDIN v. ELKUS.**
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- 24 Nev. 336-343, 54 Pac. 516. STATE v. MANDICH.**
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- 24 Nev. 370-375, 55 Pac. 304, 56 Pac. 94. MCGURN v. MCINNIS.**
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- 24 Nev. 379-389, 55 Pac. 829. SISSON v. SOMMERS.**
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- 24 Nev. 407-410, 56 Pac. 93, 77 Am. St. Rep. 820. AHLERS v. THOMAS.**
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- 24 Nev. 410-421, 56 Pac. 94. CRAWFORD v. CRAWFORD.**
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- 24 Nev. 461-476, 56 Pac. 228. HUMBOLDT COUNTY v. LANDER COUNTY.**
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- 24 Nev. 477-485, 56 Pac. 580. GULLING v. WASHOE COUNTY BANK.**
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- 25 Nev. 68-83, 56 Pac. 1008. STATE Ex Rel. OSBURN v. BECK.**
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- 25 Nev. 84-93, 56 Pac. 1121. HOPPIN v. FIRST NATIONAL BANK.**
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- 25 Nev. 101-104, 57 Pac. 484, 83 Am. St. Rep. 568. Ex Parte GAFFORD.**
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- 25 Nev. 197-202, 58 Pac. 813. **SWEENEY v. KARSKY.**
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- 25 Nev. 346-355, 60 Pac. 217. **Ex Parte DELA.**
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- 25 Nev. 356-365, 60 Pac. 376. **WASHOE COUNTY v. EUREKA COUNTY.**
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- 25 Nev. 375-377, 60 Pac. 832. **WILSON v. MORSE.**
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- 26 Nev. 34-42, 62 Pac. 595. **STATE v. BOUTON.**
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- 26 Nev. 50-54, 66 Pac. 66. **SOUTHERN DEVELOPMENT CO. v. DOUGLASS.**
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- 26 Nev. 55-67, 63 Pac. 59. STANLEY v. MINERAL UNION LIMITED.**
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- 26 Nev. 243-246, 66 Pac. 294. Ex Parte McMAHON.**
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- 26 Nev. 278-280, 66 Pac. 1087, 68 Pac. 113. STATE Ex Rel. POHL v. GAYHART.**
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- 26 Nev. 299-331, 67 Pac. 914. WALSH v. WALLACE.**
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- 26 Nev. 382-387, 69 Pac. 8. GOTELLI v. CARDELLI.**
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26 Nev. 395-415, 69 Pac. 612. WEDEKIND v. BELL.

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26 Nev. 455-460, 70 Pac. 320. DANGBERG v. RUHENSTEOH.

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27 Nev. 33-40, 71 Pac. 145. WRIGHT v. WASHOE COUNTY COMMISSIONERS.

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27 Nev. 41-56, 71 Pac. 532. STATE v. BURALLI.

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27 Nev. 71-87, 73 Pac. 528, 63 L. R. A. 337. WALLACE v. CITY OF RENO.

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27 Nev. 107-152, 73 Pac. 759, 103 Am. St. Rep. 759. SOUTHERN NEVADA G. & S. M. CO. v. HOLMES MINING CO.

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27 Nev. 156-177, 74 Pac. 5. QUINN v. QUINN.

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27 Nev. 178-220, 74 Pac. 1. ENNOB v. RAINE.

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27 Nev. 233-249, 74 Pac. 530. GAMBLE v. DISTRICT COURT.

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27 Nev. 258-287, 74 Pac. 801. LEMAIRE v. WALSH.

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27 Nev. 289-298, 74 Pac. 983. STATE v. BURNS.

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27 Nev. 299-369, 75 Pac. 1, 65 L. R. A. 47, 1 Ann. Cas. 66. Ex Parte BOYCE.

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27 Nev. 379-395, 75 Pac. 625, 76 Pac. 29. GOLDEN v. MURPHY.

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27 Nev. 421-432, 76 Pac. 747, 103 Am. St. Rep. 772, 65 L. R. A. 672, 1 Ann. Cas. 765. PAINTER v. KAISER.

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- 28 Nev. 40-65, 72 Pac. 978. **POWELL v. NEVADA, CALIFORNIA & OREGON RAILWAY.**

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- 28 Nev. 65-94, 78 Pac. 976. **McKENZIE v. COSLETT.**

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- 28 Nev. 127-149, 80 Pac. 463, 82 Pac. 453, 113 Am. St. Rep. 817, 6 Ann. Cas. 893. **Ex Parte KAIR.**

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- 28 Nev. 151-169, 80 Pac. 751, 6 Ann. Cas. 946. **CANDLER v. WASHOE LAKE R. & G. C. D. CO.**

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- 28 Nev. 169-185, 88 Pac. 1087. **ADAMS v. CHILD.**

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- 28 Nev. 220-221, 80 Pac. 1070. **McKENZIE v. COSLETT.**

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- 28 Nev. 222-234, 81 Pac. 41. **DEVENCENZI v. CASSINELLI.**

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- 28 Nev. 265-271, 81 Pac. 303. **ANDREWS v. COOK.**

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- 28 Nev. 305-350, 92 Pac. 96. **POWELL v. NEVADA-CALIFORNIA-OREGON RY. CO.**

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28 Nev. 350-380, 82 Pac. 100. STATE v. ROBERTS.

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28 Nev. 380-394, 82 Pac. 229. STATE Ex Rel. WEYERHORST v. LEE.

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28 Nev. 395-421, 82 Pac. 353. STATE v. WILLIAMS.

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28 Nev. 422-424, 82 Pac. 458. CANDLER v. WASHOE LAKE R. & G. C. DITCH CO.

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28 Nev. 491-500, 83 Pac. 223. In Re KELLY.

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29 Nev. 43-49, 83 Pac. 330. STATE v. LOVEFACE.

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29 Nev. 88-110, 85 Pac. 280, 89 Pac. 289. TWADDLE v. WINTERS.

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29 Nev. 110-123, 85 Pac. 352, 124 Am. St. Rep. 915, 5 L. R. A. (N.S.) 916. In Re CHARTZ.

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29 Nev. 135-146, 85 Pac. 449. BRANDON v. WEST.

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29 Nev. 152-154, 86 Pac. 445. LUTZ v. DISTRICT COURT.

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29 Nev. 154-161, 86 Pac. 552, 99 Pac. 1077. CHAPMAN v. JUSTICE COURT.

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29 Nev. 163-169, 86 Pac. 445. STRETCH v. MONTEZUMA M. CO.

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29 Nev. 169-187, 86 Pac. 793. FOX v. MEYERS.

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29 Nev. 191-203, 87 Pac. 1. STATE Ex Rel. LAUNIZA v. JUSTICE COURT.

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- 29 Nev. 203-225, 87 Pac. 3. STATE v. JOHNNY.**
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- 29 Nev. 226-228, 87 Pac. 2. Ex Parte PATTERSON.**
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- 29 Nev. 247-257, 88 Pac. 335. STATE Ex Rel. EQUITABLE G. M. CO. v. MURPHY.**
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- 29 Nev. 257-280, 89 Pac. 25. GULLING v. WASHOE COUNTY BANK.**
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- 29 Nev. 281-285, 88 Pac. 1088. TURNER v. LANGAN.**
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- 29 Nev. 286-287, 89 Pac. 289. HART v. SPENCER.**
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- 29 Nev. 303-306, 89 Pac. 457. YOUNG v. UPDIKE.**
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- 29 Nev. 320-346, 90 Pac. 221, 13 Ann. Cas. 1122. STATE v. HENNESSY.**
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- 29 Nev. 375-381, 91 Pac. 135. POETEOUS DECORATIVE CO. v. FEE.**
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- 29 Nev. 385-402, 91 Pac. 137, 13 L. R. A. (N.S.) 524. Ex Parte TANI.**
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- 29 Nev. 403-410, 91 Pac. 143. STATE v. JACKMAN.**
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- 29 Nev. 411-420, 91 Pac. 315. SMITH v. WELLS ESTATE CO.**
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- 29 Nev. 421-450, 91 Pac. 305. STATE v. DWYER.**
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- 29 Nev. 459-464, 91 Pac. 737. STATE Ex Rel. BOTSFORD v. LANGAN.**
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29 Nev. 469-486, 91 Pac. 891. STATE Ex Rel. DAVIS v. EGGERS.

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29 Nev. 518-551, 92 Pac. 3. HAND v. COOK.

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30 Nev. 114-145, 93 Pac. 405. NASH v. McNAMARA.

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30 Nev. 164-185, 93 Pac. 997. In Re BREEN.

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30 Nev. 391-401, 97 Pac. 49, 389. FLORENCE-GOLDFIELD MINING CO. v. DISTRICT COURT.

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30 Nev. 402-409, 97 Pac. 126. TRAVERS v. BARRETT.

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30 Nev. 409-436, 97 Pac. 391, 720. STATE Ex Rel. RYAN v. MURPHY.

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30 Nev. 437-441, 97 Pac. 390. CENTRAL TRUST CO. v. HOLMES MINING CO.

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31 Nev. 67-69, 99 Pac. 855. STATE Ex Rel. HENDERSON BANKING CO. v. LYTTON.

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31 Nev. 70-74, 99 Pac. 1077, 21 Ann. Cas. 599. KAPP v. KAPP.

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31 Nev. 74-81, 99 Pac. 1078, 22 L. R. A. (N.S.) 627, 21 Ann. Cas. 625. BURKE v. BUCK.

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31 Nev. 82-105, 100 Pac. 134. Ex Parte RICKEY.

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31 Nev. 106-110, 100 Pac. 769. Ex Parte JACKMAN.

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- 31 Nev. 120-149, 101 Pac. 322, 21 Ann. Cas. 502. MURPHY v. SOUTHERN PACIFIC CO.**
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- 31 Nev. 150-162, 101 Pac. 317. ADAMS v. ROGERS.**
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- 31 Nev. 170-180, 111 Pac. 564. KARNES v. STATE BANK AND TRUST CO.**
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- 31 Nev. 181-208, 101 Pac. 568. TURLEY v. THOMAS.**
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- 31 Nev. 239-245, 101 Pac. 553. CLINE v. LANGAN.**
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- 31 Nev. 250-269, 101 Pac. 1021. GOLDEN v. DISTRICT COURT.**
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- 31 Nev. 278-284, 102 Pac. 260. STATE v. LUHANO.**
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- 31 Nev. 285-292, 102 Pac. 257. SHERMAN v. SOUTHERN PACIFIC CO.**
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- 31 Nev. 306-325, 102 Pac. 697. LOWMAN v. NYE AND ORMSBY COUNTY BANK.**
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- 31 Nev. 348-358, 102 Pac. 963. GOLDFIELD-MOHAWK M. CO. v. FRANCES-MOHAWK M. & L. CO.**
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31 Nev. 433-443, 103 Pac. 415, 104 Pac. 801. RENO BREWING CO. v. PACKARD.

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- 31 Nev. 531-539, 103 Pac. 1073, 24 L. R. A. (N.S.) 504. **In Re SOMERS.**
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- 32 Nev. 70-74, 104 Pac. 223. **STATE v. SKINNER.**
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- 32 Nev. 75-135, 104 Pac. 225, 23 Ann. Cas. 1166. **BURCH v. SOUTHERN PACIFIC CO.**
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- 32 Nev. 136-137, 104 Pac. 245. **Ex Parte WOODBURN.**
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- 32 Nev. 230-240, 106 Pac. 561, 118 Pac. 813. **RHODES M. CO. v. BELLEVILLE PLACER M. CO.**
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- 32 Nev. 241-245, 107 Pac. 96. **SYMONS-KRAUSSMAN v. RENO WHOLESALE LIQUOR CO.**
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- 32 Nev. 278-303, 107 Pac. 882, L. R. A. 1918D 584. **TONOPAH & GOLDFIELD R. R. CO. v. FELLANBAUM.**
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- 32 Nev. 304-315, 107 Pac. 890. RUSSELL v. ESMERALDA COUNTY.**
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- 32 Nev. 319-327, 107 Pac. 881. TILDEN v. ESMERALDA COUNTY.**
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- 32 Nev. 378-384, 108 Pac. 630. Ex Parte PROSOLE.**
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- 33 Nev. 97-124, 110 Pac. 503, 29 Ann. Cas. 587. SILVER PEAK MINES v. DISTRICT COURT.**
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- 33 Nev. 435-438, 111 Pac. 929. **STATE v. SMITH.**
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- 35 Nev. 158-166, 126 Pac. 965. INDIANA NEVADA MINING CO. v. GOLD HILLS M. & M. CO.**
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- 38 Nev. 181-185, 147 Pac. 449. **STATE v. CLANCY.**
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- 38 Nev. 203-212, 147 Pac. 1081. **PRESSON v. PRESSON.**
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- 38 Nev. 215-247, 148 Pac. 551. **STATE Ex Rel. KENDALL v. COLE.**
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- 38 Nev. 285-303, 149 Pac. 65. **WECK v. RENO TRACTION CO.**
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- 38 Nev. 323-326, 149 Pac. 1888. **STATE Ex Rel. THATCHER v. DISTRICT COURT.**
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- 38 Nev. 389-398, 149 Pac. 989. **Ex Parte CROSBY.**
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- 38 Nev. 448-466, 150 Pac. 846. **STATE v. FRONHOFER.**
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- 38 Nev. 505-540, 150 Pac. 836. **STATE v. WELLS FARGO & CO.**
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- 38 Nev. 541-551, 154 Pac. 78, Ann. Cas. 1918B 1083. **NEVEN v. NEVEN.**
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- 38 Nev. 552-561, 149 Pac. 71. **RAMELLI v. SORGI.**
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- 39 Nev. 1-13, 149 Pac. 188. **ZELAVIN v. TONOPAH BELMONT DEVELOPMENT CO.**
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- 39 Nev. 14-29, 151 Pac. 514, 158 Pac. 285. **DALY v. LAHONTAN MINES CO.**
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- 39 Nev. 40-48, 152 Pac. 571. **STATE v. PAPPAS.**
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- 39 Nev. 105-114, 153 Pac. 431. **PACIFIC LIVESTOCK CO. v. MASON VALLEY MINES COMPANY.**
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- 39 Nev. 120-128, 154 Pac. 75. **EARL v. MORRISON.**
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- 39 Nev. 142-158, 154 Pac. 80. **STATE v. TRANMER.**
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- 39 Nev. 169-177, 154 Pac. 929. **SOUTHERN PACIFIC CO. v. MILLER.**
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- 39 Nev. 200-213, 155 Pac. 353. **In Re HARTUNG'S ESTATE.**
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- 39 Nev. 214-216, 156 Pac. 446. **Ex Parte LA VERE.**
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- 39 Nev. 235-250, 150 Pac. 308. **FIRST NATIONAL BANK OF ELY v. MEYERS.**
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- 39 Nev. 251-274, 156 Pac. 439. **PORCH v. PATTERSON.**
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- 39 Nev. 326-336, 156 Pac. 932. **BANK OF ITALY v. BURNS.**
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- 39 Nev. 337-351, 157 Pac. 649. **MCLEOD v. DISTRICT COURT.**
Cited *McLeod v. District Court*, 40 Nev. 327, 157 Pac. 649.
- 39 Nev. 360-364, 157 Pac. 1012. **Ex Parte MOLINO.**
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- 39 Nev. 375-405, 158 Pac. 876, 1 Am. Law Rep. 405. **JIM BUTLER TONOPAH M. CO. v. WEST END CON. M. CO.**
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- 39 Nev. 458-465, 157 Pac. 1073. **NYE COUNTY v. SCHMIDT.**
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- 39 Nev. 466-472, 159 Pac. 54. **JENSEN v. PRADERE.**
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- 40 Nev. 55-65, 160 Pac. 253. **ASPINWALL v. ASPINWALL.**
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- 40 Nev. 66-88, 160 Pac. 786. **PHILLIPS v. SNOWDEN PLACER CO.**
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- 40 Nev. 343-345, 163 Pac. 731. **GARDNER v. PACIFIC POWER CO.**
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- 40 Nev. 345-349, 163 Pac. 731. **COFFIN v. COFFIN.**
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- 40 Nev. 537-560, 167 Pac. 317. **CITY OF RENO v. STODDARD.**
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- 41 Nev. 245-275, 169 Pac. 25. **TALBOT v. MACK.**
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- 41 Nev. 330-348, 171 Pac. 156. **GAY v. DISTRICT COURT.**
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- 41 Nev. 361-363, 170 Pac. 1049. **SHUTE v. BIG MEADOW INVESTMENT CO.**
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- 42 Nev. 73-91, 172 Pac. 368, 177 Pac. 14. **DIXON v. SOUTHERN PACIFIC CO.**
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- 42 Nev. 209-217, 174 Pac. 714. **STATE v. BECK.**
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